Tourism Committee

Tuesday, March 21, 2006
2:15 PM
306 HOB

Allan G. Bense
Speaker

Rep. Nancy Detert
Chair

TOURISM COMMITTEE

Tuesday, March 21, 2006
2:15 pm – 5:15 pm
306 HOB

I.	2:15 pm	**Call to Order**
II.		**Remarks by Chairman**
III.		**Consideration of the following bills:**

- HB 925 – Pinellas County Tourist Development Council, Pinellas County
  Representative Anderson

- HB 1321 – Entertainment Industry Economic Development
  Representative Don Davis

IV. **Presentation of Tourism Committee Interim Project Report, "Florida's Entertainment Industry Infrastructure: *Are We Growing the Indigenous Industry as well as Supporting Production?*"**

Judy McDonald, Staff Director

V. **Presentation of Tourism Committee Interim Project Report, "Florida Commission on Tourism & VISIT FLORIDA: *A Review After 10 Years (1996-2006)*"**

Judy McDonald, Staff Director

VI. 5:15 pm **MOTION TO ADJOURN**

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 925 Pinellas County Tourist Development Council, Pinellas County
SPONSOR(S): Anderson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Camechis	Hamby
2) Tourism Committee		McDonald	McDonald
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill amends ch. 2001-307, L.O.F., to:

- Increase the number of elected municipal official members on the Pinellas County Tourist Development Council (Council) from 3 to 4, thereby increasing the total Council membership from 11 to 12;
- Require that one of the elected municipal official members represent the city in which the greatest percentage of tourist development tax revenue is generated in Pinellas County; and
- Require that one of the elected municipal official members be an elected city official representing a city in Pinellas County other than Belleair Beach, Belleair Shore, Indian Rocks Beach, Indian Shores, Madeira Beach, North Redington Beach, Redington Beach, Redington Shores, St. Pete Beach, and Treasure Island.

The Economic Impact Statement indicates that the bill will not have a fiscal impact in fiscal years 2006-07 or 2007-08.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Statutory Requirements Regarding Tourist Development Councils

The governing board of each county that levies and imposes a tourist development tax under s. 125.0104, F.S., must appoint an advisory council to be known as the " (name of county) Tourist Development Council." The tourist development council (council) must be established by ordinance and composed of nine members who are appointed by the governing board. The chair of the governing board of the county or any other member of the governing board as designated by the chair must serve on the council. Two members of the council must be elected municipal officials, at least one of whom must be from the most populous municipality in the county or subcounty special taxing district in which the tax is levied. Six members of the council must be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four must be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax. All members of the council must be electors of the county. The governing board of the county must have the option of designating the chair of the council or allowing the council to elect a chair. The chair must be appointed or elected annually and may be reelected or reappointed.

The members of the council serve for staggered terms of 4 years. The terms of office of the original members must be prescribed in the resolution establishing the council. The council must meet at least once each quarter and, from time to time, must make recommendations to the county governing board for the effective operation of the special projects or for uses of the tourist development tax revenue and perform such other duties as may be prescribed by county ordinance or resolution. The council must continuously review expenditures of revenues from the tourist development trust fund and must receive, at least quarterly, expenditure reports from the county governing board or its designee. Expenditures which the council believes to be unauthorized must be reported to the county governing board and the Department of Revenue. The governing board and the department must review the findings of the council and take appropriate administrative or judicial action to ensure compliance with s. 125.0104, F.S.

Pinellas County Tourist Development Council

In 2001, the Legislature enacted ch. 2001-307, L.O.F., to modify the composition of the Pinellas County Tourist Development Council (Council). The Council is now composed of 11 members who are appointed by the Pinellas County Board of County Commissioners. The chair of the Pinellas County Board of County Commissioners or any other member as designated by the chair must serve on the Council. Three members of the Council must be elected municipal officials, one of whom must be from the most populous municipality in Pinellas County, and at least one of whom must be from among the cities of Belleair Beach, Belleair Shore, Indian Rocks Beach, Indian Shores, Madeira Beach, North Redington Beach, Redington Beach, Redington Shores, St. Pete Beach, and Treasure Island. Seven members of the council must be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four must be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax. All members of the council must be electors of the county.

Effect of Proposed Changes

This bill amends ch. 2001-307, L.O.F., to increase the number of elected municipal official members on the Pinellas County Tourist Development Council (Council) from 3 to 4, thereby increasing the total Council membership from 11 to 12. The bill also revises the requirements for the elected municipal official members to require that one represent the city in which the greatest percentage of tourist development tax revenue is generated in Pinellas County and that one represent a city in Pinellas County other than Belleair Beach, Belleair Shore, Indian Rocks Beach, Indian Shores, Madeira Beach, North Redington Beach, Redington Beach, Redington Shores, St. Pete Beach, and Treasure Island.

C. SECTION DIRECTORY:

Section 1. Amends ch. 2001-307, L.O.F., to modify the composition of the Pinellas County Tourist Development Council.

Section 2. Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 30, 2006

WHERE? Pinellas News, St. Petersburg, Florida

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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Pinellas News

www.pinellas-news.com

TEL (727) 894-2411 FAX (727) 894-2522

PINELLAS COUNTY LEGISLATIVE DELEGATION
Attn: MS. DONNA McGAUGHEY
311 S. OSCEOLA AVENUE
CLEARWATER, FL 33756-5122

NO.: 123018
ACCT: 15008
Subject: **PINELLAS COUNTY TOURIST DEVELOPMENT COUNCIL**

STATE OF FLORIDA
COUNTY OF PINELLAS

Before the undersigned authority personally appeared, Carter B. Chase, who on oath says that he is the Legal Account Executive of the Pinellas News a weekly newspaper published in St. Petersburg located within Pinellas County, Florida: that the attached copy of advertisement **NOTICE OF LEGISLATION** in the matter of **SUBJECT: PINELLAS COUNTY TOURIST DEVELOPMENT COUNCIL** in the Pinellas County Circuit Court, was published in the said newspaper in the issues of **DECEMBER 30, 2006.**

Affiant further says that the said Pinellas News is a newspaper published at St. Petersburg, in said Pinellas County, Florida, and that the said newspaper heretofore has been continuously published in said Pinellas County, each week and has been entered as a periodical mail matter at the post office in St. Petersburg in said Pinellas County, for a period of one year preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

NOTICE OF LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2006 Legislature for passage of an act relating to the Pinellas County Tourist Development Council, Pinellas County; amending chapter 2001-307, Laws of Florida; revising the membership of the council; providing the effective date for such changes in council membership; providing an effective date.

15008 Dec 30, 2005 123018

Carter B. Chase

The foregoing instrument was acknowledged before me by Carter B. Chase, personally known to me
this 30TH Day of **DECEMBER, 2006,** AD.

Notary Public

ROBERT MCLEAN POTTER
MY COMMISSION # DD449949
EXPIRES: July 12, 2009
1-800-3-NOTARY Fl. Notary Discount Assoc. Co.

HOUSE OF REPRESENTATIVES
2006 LOCAL BILL CERTIFICATION

BILL #: ______________________

SPONSOR(S): Representative Anderson + Senator Fasano

RELATING TO: Pinellas County Tourist Development Council
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Pinellas County Legislative Delegation

CONTACT PERSON: Donna McGaughey

PHONE # and E-Mail: SC 570-3592 dmcgaugh@pinellascounty.org

I. *House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation.* ***Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.***

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES [X] NO [ ]

(2) Has a public hearing been held? YES [X] NO [ ]

Date hearing held: December 1, 2005

Location: Safety Harbor City Hall

(3) Was this bill formally approved by a majority of the delegation members?
YES [X] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

II. *Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [X] NO [ ] DATE [December 30, 2005]

Where? Pinellas News **County** Pinellas

Referendum in lieu of publication: YES [ ] NO [X]

III. *Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

Has this constitutional taxation requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [X]

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

12.19.05

Delegation Chair (*Original Signature*) **Date**

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #: ____________________

SPONSOR(S): Rep. Tom Anderson (45)

RELATING TO: Pinellas County - Tourist Development Council Composition
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

		FY 06-07	FY 07-08
Expenditures:	None	0	0

II. ANTICIPATED SOURCE(S) OF FUNDING:

		FY 06-07	FY 07-08
Federal:	None	0	0
State:	None	0	0
Local:	None	0	0

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

		FY 06-07	FY 07-08
Revenues:	None		

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: None

Disadvantages: None

V. **ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:**

N/A

VI. **DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:**

N/A

PREPARED BY: Cynthia E. Goudeau 01/06/2004
[Must be signed by Preparer] Date

TITLE: City Clerk

REPRESENTING: City of Clearwater

PHONE: (727.562.4091)

E-Mail Address: cyndie.goudeau@myclearwater.com

A bill to be entitled

An act relating to the Pinellas County Tourist Development Council, Pinellas County; amending chapter 2001-307, Laws of Florida; revising the membership of the council; providing the effective date for such changes in council membership; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1 of chapter 2001-307, Laws of Florida, is amended to read:

Section 1. Pinellas County Tourist Development Council; composition.--Notwithstanding the provisions of section 125.0104(4)(e), Florida Statutes, the Pinellas County Tourist Development Council as established by Pinellas County ordinance pursuant to section 125.0104, Florida Statutes, the "Local Option Tourist Development Act," shall be composed of 12 ~~11~~ members who shall be appointed by the Pinellas County Board of County Commissioners. The chair of the Pinellas County Board of County Commissioners or any other member as designated by the chair shall serve on the council. Four ~~Three~~ members of the council shall be elected municipal officials, one of whom shall be from the most populous municipality in Pinellas County, one of whom shall be from the municipality in which the greatest percentage of tourist development tax revenue is generated in Pinellas County, ~~and at least~~ one of whom shall be from among the cities of Belleair Beach, Belleair Shore, Indian Rocks Beach, Indian Shores, Madeira Beach, North Redington Beach,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Redington Beach, Redington Shores, St. Pete Beach, and Treasure Island<u>, and one of whom shall be from a city in Pinellas County that is not specifically named in this section</u>. Seven members of the council shall be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax. All members of the council shall be electors of the county. The changes in the composition of the membership of the Pinellas County Tourist Development Council mandated by this act are effective October 1, <u>2006</u> ~~2001~~, and shall not cause the interruption of the current term of any person who is a member of the Pinellas County Tourist Development Council on October 1, <u>2006</u> ~~2001~~. Except as specifically provided herein, the provisions of section 125.0104(4)(e), Florida Statutes, shall apply to the Pinellas County Tourist Development Council.

Section 2. This act shall take effect upon becoming a law.

HB 1321

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1321 Entertainment Industry Economic Development
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 2110

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Tourism Committee		McDonald	McDonald
2) Finance & Tax Committee			
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

The bill renumbers the entertainment industry incentive program from s. 288.1254, F.S., to s. 220.192, F.S., and changes the program from a reimbursement of expenditures that is dependent upon annual appropriation to a credit against corporate income tax.

Productions of filmed entertainment that are qualified by the Office of Film and Entertainment and certified by the Governor's Office of Tourism, Trade, and Economic Development are eligible for a tax credit of up to 15% of qualified expenditures in the state. Tax credits awarded in a fiscal year will be made based on the production's principal photography start date for the queue in which it is placed, within the first two weeks after the queue's opening. Other qualified productions entering into a queue after the initial two weeks will be on a first come, first served basis.

There are three queues: film, television, and episodic queue; television pilot queue; and commercials and music video queue. Productions in the first queue must have a minimum of $625,000 in total qualified expenditures for the entire run of the project, except for high-impact television series which must have a minimum of $625,000 in qualified expenditures for each episode. A single production may receive a maximum credit of $2 million. A high-impact television series may receive a maximum credit of $3 million. Qualified high-impact television series will be allowed first position in this queue for their first five production seasons. Television series are not allowed tax credits after five seasons. Productions in the television pilot queue must have $625,000 in expenditures for the pilot episode or presentation. A single production in this queue may receive a maximum credit of $2 million. Productions in the third queue must have a minimum of $500,000 in total qualified expenditures in a state fiscal year, with a minimum of $75,000 for each production. The first queue receives 60% of the available tax credit in any fiscal year. The remaining queues each receive 20%.

There is a total tax credit cap of $25 million per fiscal year. If applications for credit exceed that amount for a fiscal year, the excess will be treated as having been applied for on the first day of the next fiscal year in which tax credits remain available for allocation. See "Fiscal Analysis" for impact of the tax credit.

Tax credits may be carried forward for up to 5 years. Upon application and approval by the Department of Revenue, a taxpayer may sell or assign, in whole or in part, tax credits. Credits cannot be exchanged for less than 75% of the tax credit to be transferred. Limitations of the credit apply to the purchaser. The purchaser cannot sell, assign, or otherwise transfer the tax credit. A qualified production company that is not a corporation can distribute credits to its partners or members in proportion to the respective distributive share of the partners' or members' income or loss for the year in which the credits were approved.

The newly created section of law is repealed July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Department of Revenue to adopt rules to implement provisions of the bill and increases the responsibility of the department. The bill also requires that the Governor's Office of Tourism, Trade, and Economic Development adopt rules.

Ensure lower taxes – The bill changes an incentive funded through appropriation to a corporate tax credit. The aggregate amount of tax credits allowed in any fiscal year is $25 million. The corporate tax credit provisions are repealed July 1, 2014.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Description of Florida's Entertainment Industry Incentive (s. 288.1254, F.S.)

The available incentive amount for the program is based upon an annual legislative appropriation. The program was enacted in 2003 but did not receive funding until FY 2004-05 when $2.45 million was appropriated. The program was modified in 2005 and received an appropriation of $10 million for FY 2005-06.

The purpose of this program is to encourage the use of Florida as a site for film and video production, to advocate the hiring of Florida residents as staff, cast or crew and to support and encourage the use of other Florida services and equipment companies in the production of filmed entertainment. The program is also to encourage the relocation to and/or expansion of digital-media-effects companies and motion picture, television production and postproduction companies in Florida.

Production Incentive:

A qualified production[1] is eligible to receive up to 15% in a cash reimbursement of in-state qualifying expenditures up to a maximum of $2 million provided that the production has a minimum in total qualified expenditures of $850,000 for the entire run of the project. In determining the expenditures, the wages, salaries, or other compensation of two highest paid employees is excluded. The final reimbursement is determined after receipts and other information has been submitted to the Office of Film and Entertainment (OFE) for review.

By statute, 60% of the incentive funding is dedicated to theatrical or direct-to-video motion pictures, made-for-TV movies, commercials, music videos, industrial and education films, promotional videos or films, documentary films, TV specials, and digital-media-effects productions by entertainment industry to be sold or displayed in an electronic medium. The remaining 40% is dedicated to TV pilots or TV series to be sold or displayed in an electronic medium.[2]

Funding for the two queues remains separate until February 1 of the fiscal year when the funding and queues are combined.

Digital Media Effects Company:

[1] A "qualified production" is filmed entertainment that makes expenditures in this state for the total or partial production of filmed entertainment. Productions cannot contain obscene content as defined by the United States Supreme Court. A production is not qualified if it is determined that the first day of principal photography in this state occurred on or before the date of submitting an application to OFE or prior to certification by OTTED. Also, note that electronic gaming industry and sporting events are specifically excluded.

[2] Included in the 40% are drama, reality, comedy, soap opera, telenovela, game show, or miniseries productions.

The statute provides that a digital-media-effects company in the state may be eligible for a payment of not more than 5% of its annual gross revenues of qualified expenditures as defined in s. 288.1254(2)(c), F.S. The Office of Film and Entertainment reviews applications for eligibility for reimbursement.

Qualified Relocation Project:

A qualified relocation project is a corporation, limited liability company, partnership, corporate headquarters, or other private entity that is domiciled in another state or country and relocates its operations in this state, is organized under the laws of this or any other state or country, and includes as one of its primary purposes digital-media-effects or motion picture and television production or postproduction.

The project may receive a one-time incentive payment in an amount equal to 5% of its annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile or $200,000, whichever is less.

Impact of Florida's Entertainment Industry Financial Incentive Program

Production Impact:

With no multiplier effect included, the return on investment for the $2.45 million appropriated for the entertainment industry incentive in 2004-05 was 7.5:1 with estimated total in-Florida production expenditures of almost $18.5 million with more than $9.1 million being Florida resident wages. The return on the $10 million for FY 05-06 is estimated to be 7.4:1 with an estimated total in-Florida production expenditure of $73.9 million with Florida resident salaries accounting for more than $36.6 million. In the first year, four productions were certified for funding while 15 productions were certified as of December, 2005 for funding in the second year.

Digital Media Effects Company Impact:

According to the Office of Film and Entertainment, only two digital media applications have been approved in two years.

Qualified Relocation Project Impact:

According to the Office of Film and Entertainment, there have been no applications received for company relocations over the two years that funding has been available. As stated earlier, company relocations are often encouraged through other, more lucrative economic development incentives available through OTTED with recommendation by Enterprise Florida and through local government economic development agencies.

Florida Film and Entertainment Advisory Council (FFEAC)

The FFEAC is a statutorily-created advisory body to the Governor's Office of Tourism, Trade, and Economic Development and to the Office of Film and Entertainment. The 17 member council is composed of members appointed by the Governor, President of the Senate, and Speaker of the House of Representatives. One of the duties of FFEAC is to advise and consult on laws governing the entertainment industry.

Based upon a series of public meetings, the following changes were approved for recommendation at the December 9, 2005 meeting. These changes addressed concerns relating to commercial production, television pilots and episodes, minimum expenditure requirements, encouraging independent production, application process, and method of funding of the incentive. The following were recommended:

- Eliminate specific incentives in law relating to qualified relocation projects and digital-media-effects companies because of lack of use.
- Change the current law allowing for two queues to four queues to do the following:
    1. Recognize the differences between commercial and music video production and film, television movies, and specials by splitting into two queues, with 58% of funding for the film queue and 20% for the commercial and video production;
    2. Provide emphasis on TV pilots by changing the current TV pilots or TV series queue to include only TV pilots and shift the series (episodics) to the film queue, with 20% of funding to be used for TV pilots; and,
    3. Create a new queue for an independent film and video distribution bonus to encourage independent, indigenous productions, with 2% of funding set aside for this purpose.
- Reduce the minimum Florida qualified expenditure requirement from $850,000 to $625,000 for the film, TV Movie, TV series, and TV pilots to conform to what is the current Screen Actors Guild minimum threshold for low-budget films.
- Reduce minimum expenditure to $500,000 and reduce the $2 million reimbursement cap to $500,000 for commercials and music videos and allow production companies to add up qualified expenditures from multiple commercials within fiscal year to reach minimum expenditures. Also allow for cumulative spend over a fiscal year to meet minimum expenditure level.
- Modify the application and reimbursement process, provide for rules, and specify marketing requirements for Florida recognition in productions.
- Retain the current maximum reimbursement of 15% up to the maximum payout of $2 million.

The FFEAC was reviewing and comparing the current funding of the incentive through appropriation to the use of a transferable tax credit similar to what most of Florida's competitor states use as their incentive. The official recommendation was not provided at the meeting.

Subsequent to the meeting, the FFEAC endorsed the use of a transferable tax credit. The FFEAC also agreed to remove the proposed queue on distribution for independent films because of difficulty in implementing the proposal at this time.

Other States[3]

Some states without a strong infrastructure, such as Louisiana, are using incentives to lure business while infrastructure is being brought in from outside until a base can be built in the state. The director of the Louisiana Film Office has compared the state to Canada ten years ago before it had developed its infrastructure.

Louisiana and seven other states have enacted transferable tax credits that are assignable, can be sold, or can be carried forward for a number of years. Depending upon the state, these credits are offered to production companies on investments (LA, GA), payroll (LA, GA, IL, MA), and production costs (LA, AZ, GA, MA, MO, PA, RI). Nine states offer income tax refunds, rebates, or credits on payroll, production costs, or investments. New Mexico and New Jersey offer low interest loans or loan guarantees to encourage film production. Three states, Louisiana, Oklahoma, and South Carolina, offer incentives for investment in facilities, productions, and certain entertainment businesses.

Unlike Florida's incentive that does not require the hiring of a percentage of residents, the production incentives offered by many other states are tied to employment of residents, with some requiring the hiring of a percentage of local crew, or the use of soundstages or other facilities. Some states offer additional incentives related to employment and to the training or mentoring of crew by a production. Often these are used to help build the infrastructure base of a state.

Proposed Changes:

[3] Florida's Entertainment Industry Infrastructure: *Are We Growing the Indigenous Industry as well as Support Production?*, Tourism Committee, Florida House of Representatives, 2006, p 16.

The bill renumbers the entertainment industry incentive program from s. 288.1254, F.S., to s. 220.192, F.S., and changes the program from a reimbursement of expenditures that is dependent upon annual appropriation to a credit against corporate income tax.

The digital media-effects company and qualified relocation project incentives that were in s. 288.1254, F.S., are deleted. The incentive in s. 220.192, F.S., pertains only to the production of filmed entertainment.

Definitions are amended to make clarifications and to reflect the change to a tax credit. The definition of "filmed entertainment" is changed to add "television special" to the list and to change the exclusions from the definition to include only news shows and sporting events. A definition of "qualified production company" is added. Also, a definition of "high-impact television series" is added to distinguish it from other television series. The high-impact television series is created to run multiple seasons with at least seven episodes per season and qualified expenditures of at least $625,000 per episode. "Production costs" now include wages, salaries, or other compensation paid through payroll services companies.

The application procedure and application approval process for filmed entertainment have been changed to reflect change to a tax credit. In addition to technical changes and the shift of language to the section on rules, the following changes are made in the bill relating to application:

- the signed affirmation that information on an application form has been verified and is correct is shifted from the Office of Film and Entertainment (OFE) to the applicant;
- the time frame for OFE to review the application and make recommendation to the Governor's Office of Tourism, Trade, and Economic Development (OTTED) regarding the amount of the tax credit award and for notifying an applicant that the information provided is not complete has been increased from 5 days to 10 business days;
- OFE must notify the applicant of the certified maximum tax credit award within 10 days of OTTED certifying the amount;
- Language is removed which gives OFE verification responsibility after the production has completed its filming related to the initial notification of credit. This is to verify the amount of expenditures upon which the tax credit will be taken. Language, however, remains stating that OTTED shall make the final determination for the actual tax credit award.

Productions of filmed entertainment that are qualified by OFE and certified by OTTED are eligible for a tax credit of up to 15% of qualified expenditures in the state, excluding wages, salaries, and other compensation paid to the two highest-paid employees of the production in the state.

Tax credits awarded in a fiscal year will be made based on the production's principal photography start date for the queue in which it is placed, within the first two weeks after the queue's opening. Other qualified productions entering into a queue after the initial two weeks will be on a first come, first served basis.

There is a total credit cap of $25 million per fiscal year. If applications for credit exceed that amount for a fiscal year, the excess will be treated as having been applied for on the first day of the next fiscal year in which tax credits remain available for allocation.

If a qualified production is not continued subject to a reasonable schedule, OFE shall withdraw its eligibility and reallocate the funds to the next qualified productions already in the queue that have not received their full tax credit.

There are three queues: film, television, and episodic queue; television pilot queue; and commercials and music video queue. Productions in the first queue must have a minimum of $625,000 in total qualified expenditures for the entire run of the project except for high-impact television series which must have a minimum of $625,000 in qualified expenditures for each episode. A single production may receive a maximum credit of $2 million. A high-impact television series may receive a maximum credit of $3 million. This queue receives 60% of the available tax credit in any fiscal year. Qualified high-impact television series will be allowed first position in this queue for their first five production seasons, if an application is received by OFE within the first two weeks after the queue opens. Television series are not allowed tax credits after five seasons. Productions in the television pilot queue must demonstrate $625,000 in expenditures for the pilot episode or presentation. A single production in this queue may receive a maximum credit of $2 million. This queue receives 20% of the available tax credit in any fiscal year. The third queue requires productions to demonstrate a minimum of $500,000 in total qualified expenditures in a state fiscal year, with a minimum of $75,000 in qualified expenditure for each production. This queue receives 20% of the available tax credit in any fiscal year. On March 1 of each year credits remaining in the first two queues will be merged and placed into a general queue for use for other purposes as determined by OFE. On April 1 of each fiscal year credits remaining in the third queue will be merged into the general queue.

If a taxpayer cannot use the full amount of tax credit granted, the balance may be carried forward for up to five years.

Upon application and approval by the Department of Revenue, a taxpayer may sell or assign, in whole or in part, tax credits granted under this section. Credits cannot be exchanged for consideration of less than 75% of the tax credit to be transferred. Purchasers of the credit may use it subject to the same limitations as the taxpayer to whom the credit was granted. The purchaser cannot sell, assign, or otherwise transfer the tax credit.

A qualified production company that is not a corporation, as defined in s. 220.03(1)(e), F.S., can make an election to the Department of Revenue to distribute credits to its partners or members in proportion to the respective distributive share of the partners' or members' income or loss for the year in which the credits were approved. Unused credits may be carried forward 5 years.

The bill requires that a qualified production applying for a tax credit award must submit, no later than August 15 of the state fiscal year following the state fiscal year in which claimed qualified expenditures were incurred, a single report from a certified public accountant, preapproved by OFE. The report must document the amount of claimed qualified expenditures.

The bill requires OFE to ensure that appropriate marketing materials, when appropriate, are included in filmed entertainment.

The bill requires for the development of rules by OTTED.

The bill provides that an applicant who knowingly submits fraudulent information on an application is liable for reimbursement of reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent application.

The newly created section of law is repealed July 1, 2014.

Finally, the bill makes a cross-reference change in s. 477.0135, F.S.

C. SECTION DIRECTORY:

Section 1. Transfers and renumbers s. 288.1254, F.S., as s. 220.192, F.S.; revising the entertainment industry incentive program to provide corporate income tax credits to qualified entertainment entities rather than reimbursements from appropriations; revising definitions; changing expenditure levels required for qualification for the incentive; providing varying incentive fiscal year maximums dependent upon type of filmed entertainment; revising application procedures, approval process, fraudulent claims, and annual report; requiring rules; providing criteria and limitations for awards of tax credits; providing for $25 million in tax credits for each fiscal year; providing that credits may be used, carried forward, transferred or sold; providing marketing requirements for qualified productions; and providing for repeal of section on July 1, 2014.

Section 2. Amends s. 477.0135(5), F.S., correcting a cross-reference.

Section 3. Providing an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-07	FY 2007-08	FY 2008-09
General Revenue	($25M)	($25M)	($25M)

This is the maximum allowed per state fiscal year. See "Fiscal Comments."

2. Expenditures:

Minimal. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. See "Fiscal Comments."

2. Expenditures:

None. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indigenous qualified productions of filmed entertainment will receive a 15% corporate tax credit on their qualified expenditures as will qualified productions coming from outside the state to produce filmed entertainment in Florida. If a production company does not owe corporate tax in Florida, the bill provides that the credits can be transferred or sold to Florida taxpayers for use on what they owe in corporate tax. The tax credits cannot be sold for less than 75% of the face value of the credits. Credits can also be carried forward for 5 years.

The credit is intended, among other things, to encourage more television series to shoot in the state. These, generally, run for a number of years bringing longer term employment and stability to the state's entertainment industry infrastructure and encouraging growth in the infrastructure. The bill also provides greater incentive for commercials and music videos which generally are filmed during a time when other filmed entertainment is not as active in the state.

The purpose of the credit is to encourage the state as a site for filming and to develop and sustain the workforce and infrastructure for filmed entertainment. An infusion of more money from more production as well as a sustained level of production business will help the state to maintain and possibly increase its trained, experienced crew base and other infrastructure. The Florida Agency for Workforce Innovation stated that in 2004 the average salary for crew in Florida was $52,972, excluding health care and retirement benefits.[4]

An increase in filmed entertainment in the state will impact not only the persons directly employed by the production but will impact ancillary businesses such as building supply companies, nurseries, restaurants, and hotels.

D. FISCAL COMMENTS:

The aggregate amount of tax credits allowed under the bill is $25 million in any fiscal year from FY 2006-07 to FY 2013-2014. The total aggregate credit allowed over the eight years is $200 million.

[4] Florida Agency for Workforce Innovation, Labor Market Statistics, 2001 – 2004.

At this time, it is not known how much of the credit will be used in the first year. This is all dependent upon the types and number of qualified productions availing themselves of the credit. The exact amount of the tax credit award will not be known until after productions are completed and all expenditures verified as being qualified expenditures for claiming the credit. There are ceilings on the total credits for the filmed entertainment productions in the bill with the two highest maximum credits being $2 million for a single production and $3 million for a high-impact television series.

There could be some impact on the Office of Film and Entertainment if there is an increase in application for the incentive when it is changed from an appropriation to a tax credit. The Office of Film and Entertainment has not requested any additional resources to implement the legislation. The Department of Revenue could experience some impact because of the added responsibilities placed upon the department. At this time, the Department of Revenue has stated that the it does not anticipate an impact that would require an appropriation.

The impact of the legislation on local governments is not known at this time; however, increases in filmed entertainment in an area have historically brought an increase in revenue.

The FY 2005-06 appropriation of $10 million for the entertainment industry incentive yielded an estimated $73.9 million in in-state production expenditures, hiring 3,775 Florida residents, and having 12,444 hotel room nights. The Florida wages paid were almost $37 million. The return on investment was 7.4:1.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

3. Applicability of Municipality/County Mandates Provision:

   The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

4. Other[5]:

   In Cuno v. DaimlerChrysler,[6] the Sixth Circuit Court of Appeals invalidated an Ohio state corporate franchise tax credit on grounds that it violated the dormant Commerce Clause of the United States Constitution. The Ohio tax credit applied to the purchase of manufacturing machinery and equipment used in the state and was intended to provide an incentive for the location or expansion of business within the state.

   At present the case has no precedential value to courts in the Eleventh Circuit, which includes Florida, because it has been decided in the Sixth Circuit. On September 27, 2005, however, the Supreme Court granted petitions for certiorari by the State of Ohio and DaimlerChrysler, challenging the Cuno decision. Arguments were heard by the Court on March 1, 2006. The Court should issue a ruling in the summer of 2006. If the Court affirms the Cuno decision, it will become the law of the land, and similar tax incentives in Florida will be at risk of being struck down.

   As a general rule, a tax credit or exemption will violate the dormant Commerce Clause if it discriminates on its face or if, on the basis of "a sensitive, case-by-case analysis of purposes and effects," the provision "will in its practical operation work discrimination against interstate commerce"

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[5] Information taken from *An Analysis of Cuno v.DaimlerChrysler And Its Possible Effects on Florida Business Location Tax Incentives*, November 3, 2005, prepared by staff of the Economic Development, Trade and Banking Committee, Florida House of Representatives.

[6] Cuno v. DaimlerChrysler, 386 F.3d 738(6th Cir. 2004)

by "providing a direct commercial advantage to local business."[7] The high court has defined "discrimination" in this context to mean the "differential treatment of in-state and out-state economic interests that benefits the former and burdens the latter."[8]

Under Cuno, the constitutional challenge that a tax incentive faces will turn on whether the taxpayer is subject to the state's taxing power and whether the tax incentive favors in-state as opposed to out-of-state activities. The Cuno test may be explained as follows:

1. Is the business subject to Florida's taxing power?
2. Will the business reduce its Florida tax liability by availing itself of the tax incentive for location or expansion of business in Florida and not by locating or expanding business activity out-of-state? or Will its location or expansion of business activity out-of-state result in a comparative tax increase, as to a similarly-situated business expanding in Florida, because it will not be able to avail itself of the in-state tax incentive?

If the answer is questions 1 and 2 are "yes", the tax incentive likely fails the Cuno test.[9]

B. RULE-MAKING AUTHORITY:

The bill provides for the Office of Tourism, Trade, and Economic Development to adopt rules to implement the bill. The bill, however, does not provide rulemaking authority for the Department of Revenue to implement the provisions of the bill for which it is given authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In its review of the bill, the Department of Revenue suggested the following changes:

- Amend s. 220.02(8), F.S., to incorporate the newly created corporate tax credit in the list of how the taxes are to be applied.
- On lines 82 - 89, clarify the phrase "two highest paid employees" to indicate that they are the employees of the production and are residents of the state.
- Lines 89 - 90, allows for "up to" 15 percent in a corporate tax credit. Does not state under what circumstances less than 15 percent would be given or how it would be computed. Recommend removing "up to".
- Lines 116 and 224, the term "office" is used but is not defined. Define or specify which office.
- Line 121, remove "15 percent".
- Lines 164 - 177, clarify who is required to notify the applicant of the amount of the tax credit award. Clarify the two 10 business day notification periods.
- Lines 175 - 177, add language requiring the certification to be in writing and a copy to be sent to the applicant and to the executive director of the Department of Revenue (DOR). Require applicant to forward a certified application to the department.
- Lines 187 - 189, indicates that a production is qualified and certified. Clarify how a production becomes qualified by the Office of Film and Entertainment (OFE) and certified by the Office of Tourism, Trade, and Economic Development (OTTED).
- Line 190, the term "qualifying" needs to be changed to "qualified" to be consistent with the term that is defined.
- Line 215, add language stating that "at such time as $200 million of tax credits have been allocated, no additional tax credits shall be allocated."
- Lines 277 - 290, clarify if each expenditure of $75,000 or more per production can be combined to reach the $500,000 overall minimum and clarify if the minimum applies for a fiscal year, taxable year or life of the credit program.
- Authorize DOR to adopt rules necessary to administer the credit. Authorize DOR to require that the taxpayer document its eligibility to claim the credits, to determine whether credits are

[7] Id. at 743 (quoting West Lynn Creamery v. Healy, 512 U.S. 186, 201 (1994)).
[8] Id. (quoting Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality, 511 U.S. 93, 99 (1994)).
[9] *An Analysis of Cuno v. DaimlerChrysler And Its Possible Effects on Florida Business Location Tax Incentives*, November 3, 2005, prepared by staff of the Economic Development, Trade and Banking Committee, Florida House of Representatives, p. 7.

claimed by the proper parties, if they have been claimed in the correct amount, and authority to address credits claimed incorrectly.

- Lines 311 - 314, provide oversight for this provision.
- Lines 330 - 341, provide for verification or oversight to determine if the transfer of credits has been done according to the statutory provisions.
- Lines 374 - 387, amend language to address tax credits and not payments.

All of the changes have been addressed in a strike-all amendment prepared for the sponsor.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to entertainment industry economic development; transferring, renumbering, and amending s. 288.1254, F.S.; revising the entertainment industry financial incentive program to provide corporate income tax credits to qualified entertainment entities rather than reimbursements from appropriations; revising provisions relating to definitions, creation and scope, application procedures, approval process, eligibility, required documents, qualified productions, rules, fraudulent claims, and annual reports; providing criteria and limitations for awards of tax credits; providing marketing requirements; providing for future repeal; amending s. 477.0135, F.S.; correcting a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 288.1254, Florida Statutes, is transferred and renumbered as section 220.192, Florida Statutes, and amended to read:

220.192 ~~288.1254~~ Entertainment industry financial incentive program; creation; purpose; definitions; application procedure; approval process; ~~reimbursement~~ eligibility; submission of required documentation; recommendations for credit award ~~payment~~; policies and procedures; fraudulent claims.--

(1) CREATION AND PURPOSE OF PROGRAM.--~~Subject to specific appropriation,~~ There is created within the Office of Film and

Entertainment an entertainment industry financial incentive program. The purpose of this program is to encourage the use of this state as a site for filming and developing and sustaining the workforce and infrastructure ~~providing production services~~ for filmed entertainment.

(2) DEFINITIONS.--As used in this section, the term:

(a) "Filmed entertainment" means a theatrical or direct-to-video motion picture, a made-for-television motion picture teleproduction, a commercial, a music video, an industrial or educational film, a promotional video or film, a documentary film, a television pilot, a presentation for a television pilot, a television special, a television series, including, but not limited to, a drama, a reality, a comedy, a soap opera, a telenovela, a game show, and a miniseries production, or a digital-media-effects production by the entertainment industry to be sold or displayed in an electronic medium, excluding news shows and sporting events. As used in this paragraph, the term "motion picture" means a motion picture made on or by film, tape, or otherwise and produced by means of a motion picture camera, electronic camera or device, tape device, any combination of the foregoing, or any other means, method, or device now used or which may hereafter be adopted. As used in this paragraph, the term "digital-media-effects" means visual elements created through the modification of already existing or newly created visual elements for film, video, or animated media through the use of digital 2D/3D animation or painting, motion capture, or compositing technologies. ~~For purposes of this section, the term "filmed entertainment" does not include the~~

~~electronic gaming industry or sporting events.~~

(b) "High-impact television series" means a production created to run multiple production seasons with an estimated order of at least seven episodes per season and qualified expenditures of at least $625,000 per episode.

(c) ~~(b)~~ "Production costs" means the costs of ~~real,~~ tangible~~,~~ and intangible property used and services performed primarily or customarily in the production, including preproduction and postproduction, of qualified filmed entertainment. Production costs generally include, but are not limited to:

1. Wages, salaries, or other compensation, including amounts paid through payroll service companies, for technical and production crews, directors, producers, and performers ~~who are residents of this state~~.

2. Expenditures for sound stages, backlots, production editing, digital effects, sound recordings, sets, and set construction.

3. Expenditures for rental equipment, including, but not limited to, cameras and grip or electrical equipment.

4. Expenditures for meals, travel, and accommodations~~, and goods~~ used in producing filmed entertainment ~~that is located and doing business in this state~~.

5. Expenditures for goods and services used in producing filmed entertainment.

(d) ~~(c)~~ "Qualified expenditures" means production costs incurred in this state within the current fiscal year for goods purchased or leased from or services provided by ~~purchased,~~

~~leased, or employed from a resident of this state or~~ a vendor or supplier who is located and doing business in this state~~,~~ or payments to residents of this state ~~but~~ excluding wages, salaries, and ~~or~~ other compensation paid to the two highest-paid employees in this state.

(e) ~~(d)~~ "Qualified production" means filmed entertainment that meets or exceeds minimum ~~makes~~ expenditures required in this state for the total or partial production of filmed entertainment. Productions that are deemed by the Office of Film and Entertainment to contain obscene content, as defined by the United States Supreme Court, are not qualified productions. ~~Also, a production is not a qualified production if it is determined that the first day of principal photography in this state occurred on or before the date of submitting its application to the Office of Film and Entertainment or prior to certification by the Office of Tourism, Trade, and Economic Development.~~

(f) ~~(e)~~ "Qualified production company ~~relocation project~~" means a corporation, limited liability company, partnership, ~~corporate headquarters,~~ or other ~~private~~ entity engaged in productions of filmed entertainment ~~that is domiciled in another state or country and relocates its operations to this state, is organized under the laws of this or any other state or country, and includes as one of its primary purposes digital-media-effects or motion picture and television production, or postproduction~~.

(3) APPLICATION PROCEDURE; APPROVAL PROCESS.--

(a) Any company engaged in this state in producing filmed entertainment may submit an application to the Office of Film and Entertainment for the purpose of determining qualification for an award of credits against the tax imposed by this chapter as ~~receipt of reimbursement~~ provided in this section. The office must be provided information required to determine if the production is a qualified production and to determine the qualified expenditures, production costs, and other information necessary for the office to determine ~~both~~ eligibility for the 15-percent tax credit ~~and level of reimbursement~~.

(b) ~~A digital-media-effects company in the state which furnishes digital material to filmed entertainment may submit an application to the Office of Film and Entertainment for the purpose of determining qualification for receipt of reimbursement authorized by this section. The office must be provided information required to determine if the company is qualified and to determine the amount of reimbursement.~~

~~(c) Any corporation, limited liability company, partnership, corporate headquarters, or other private entity domiciled in another state which includes as one of its primary purposes digital-media-effects or motion picture and television production and which is considering relocation to this state may submit an application to the Office of Film and Entertainment for the purpose of determining qualification for reimbursement under this section.~~

~~(d)1. The Office of Film and Entertainment shall establish a process by which an application is accepted and reviewed and reimbursement eligibility and reimbursement amount are determined. The Office of Film and Entertainment may request~~

~~assistance from a duly appointed local film commission in determining qualifications for reimbursement and compliance.~~

1.~~2.~~ The Office of Film and Entertainment shall develop a standardized application form for use in approving a qualified production~~, a qualified relocation project, or a company qualifying under paragraph (a), paragraph (b), or paragraph (c)~~. The application form for a qualified production must include, but need not be limited to, production-related information on employment, proposed total production budgets, planned expenditures in this state ~~which are intended for use exclusively as an integral part of preproduction, production, or postproduction activities engaged primarily in this state~~, and a signed affirmation from the applicant ~~Office of Film and Entertainment~~ that the information on the application form has been verified and is correct. The application form shall be distributed to applicants by the Office of Film and Entertainment or local film commissions.

2.~~3.~~ The Office of Film and Entertainment must complete its review of each application and recommend approval of the amount of the tax credit award to the Office of Tourism, Trade, and Economic Development or notify the applicant that he or she has not met the requirements for qualification within 10 business ~~5~~ days after receipt of the completed application, including all required information, and it must notify the applicant of the certified maximum tax credit award, if any, ~~its determination~~ within 10 business days after being notified of certification by the Office of Tourism, Trade, and Economic Development ~~receipt of the completed application and required~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~information~~.

3.~~4.~~ ~~Upon determination that all criteria are met for qualification for reimbursement, The Office of Film and Entertainment shall notify the applicant of such approval. the office shall also notify the Office of Tourism, Trade, and Economic Development of the applicant approval and amount of reimbursement required.~~ The Office of Tourism, Trade, and Economic Development shall make the final determination for the actual tax credit award ~~reimbursement~~.

4.~~5.~~ The Office of Film and Entertainment shall deny an application if it determines that:

a. The application is not complete or does not meet the requirements of this section; or

b. The tax credit amount ~~reimbursement~~ sought does not meet the requirements of this section ~~for such reimbursement~~.

(4) CREDIT ~~REIMBURSEMENT~~ ELIGIBILITY; SUBMISSION OF REQUIRED DOCUMENTATION; APPLICATION ~~RECOMMENDATIONS~~ FOR TRANSFER ~~PAYMENT~~.--

(a) A production that is qualified by the Office of Film and Entertainment and is certified by the Office of Tourism, Trade, and Economic Development is eligible for a tax credit for ~~reimbursement of~~ up to 15 percent of its qualifying expenditures in this state on a filmed entertainment program, excluding wages, salaries, and other compensation paid to the two highest-paid employees of the production in this state ~~that demonstrates a minimum of $850,000 in total qualified expenditures for the entire run of the project, versus the budget on a single episode, within the fiscal year from July 1 to June 30~~. ~~However,~~

~~the maximum reimbursement that may be made with respect to any filmed entertainment program is $2 million. All reimbursements under this section are subject to appropriation.~~ <u>Tax credits awarded</u> ~~Payments~~ under this section in a fiscal year shall be made to qualified productions according to a production's principal photography start date, for those qualified productions having entered into the first queue as cited in subparagraph 1. or the second queue cited in subparagraph 2. within the first 2 weeks after the queue's opening. All other qualified productions entering into either queue after the initial 2-week openings shall be on a first-come, first-served basis ~~until the appropriation for that fiscal year is exhausted~~. <u>The aggregate amount of tax credits allowed under this section in any fiscal year is $25 million. If the total amount of allocated tax credits applied for in any fiscal year exceeds the aggregate amount of tax credits authorized annually under this section, such excess shall be treated as having been applied for on the first day of the next fiscal year in which tax credits remain available for allocation.</u> ~~On February 1 of each year, the remaining funds within both queues shall be combined into a single queue and distributed based on a project's principal photography start date. The eligibility of qualified productions may not carry over from year to year, but such productions may reapply for eligibility under the guidelines established for doing so. The Office of Film and Entertainment shall develop a procedure to ensure that qualified productions continue on a reasonable schedule until completion.~~ If a qualified production is not continued according to a reasonable schedule, the office shall withdraw its eligibility and reallocate the funds to the next qualified productions already in the queue that have yet to receive their full tax credit ~~maximum or 15-percent financial reimbursement~~, if they have not started principal photography by the time the funds become available.

1. Film, television, and episodic queue.--Theatrical or direct-to-video motion pictures, made-for-television movies, ~~commercials, music videos,~~ industrial and educational films, promotional videos or films, documentary films, television specials, television series, including, but not limited to, miniseries and telenovelas, and digital-media-effects productions by the entertainment industry to be sold or displayed in an electronic medium that demonstrate a minimum of $625,000 in total qualified expenditures for the entire run of the project, which, for a television series, means a season even if the season is not completed in the same fiscal year in which principal photography began, shall have their own separate queue established, and such queue shall have dedicated to it 60 percent of all available tax credits in any fiscal year for which this section applies ~~of the state incentive money~~. The maximum tax credit award that may be made from this queue for any single production is $2 million, unless the production is a high-impact television series, in which case the production shall be eligible for a maximum tax credit award of $3 million, provided such production meets the other criteria of this section. On March 1 of each year, the remaining tax credits within this queue shall be merged into a general queue and may be used for other purposes of this section as determined by the

Office of Film and Entertainment. A qualified high-impact television series shall be allowed first position in this queue for its first five production seasons if the application is received by the Office of Film and Entertainment within the first 2 weeks after the queue's opening. A television series after its fifth production season is not eligible for tax credit awards under this section.

2. Television pilot queue.--Television pilots and~~,~~ presentations for television pilots for television series intended to be shot in this state and~~, or television series, including, but not limited to, drama, reality, comedy, soap opera, telenovela, game show, or miniseries productions, by the entertainment industry to be~~ sold or displayed in an electronic medium that demonstrate a minimum of $625,000 in total qualified expenditures for the pilot episode or presentation shall have their own separate queue established, and such queue shall have dedicated to it 20 ~~40~~ percent of all available tax credits in any given fiscal year for which this section applies ~~of the state incentive money~~. The maximum tax credit award that may be made from this queue for any single project is $2 million. On March 1 of each year, the remaining tax credits within this queue shall be merged into a general queue and may be used for other purposes of this section as determined by the Office of Film and Entertainment.

3. Commercials and music video queue.--Commercials and music videos by the entertainment industry to be sold or displayed in an electronic medium that demonstrate a minimum of $500,000 in total qualified expenditures from a production

company during the state fiscal year with a minimum of $75,000 in qualified expenditures for each production shall have their own separate queue established. Such queue shall have dedicated to it 20 percent of available tax credits in any given fiscal year for which this section applies. The maximum tax credit award that may be made from this queue for any single production company is $500,000. On April 1 of each year, the remaining tax credits within this queue shall be merged into a general queue and may be used for other purposes of this section as determined by the Office of Film and Entertainment.

(b) The tax credit available under this section shall only be surrendered in satisfaction of the tax owed by a qualified production company under this chapter and only up to the face amount of the credit. If the qualified production company cannot use the entire tax credit in the year in which the credit is approved, any excess may be carried over to a succeeding taxable year. A tax credit granted under this section may be carried forward only for a maximum of 5 years following the year in which the credit was approved. ~~A digital-media-effects company in the state which furnishes digital material to filmed entertainment may be eligible for a payment in an amount not to exceed 5 percent of its annual gross revenues on qualified expenditures as defined in paragraph (2)(c) before taxes or $100,000, whichever is less. A company applying for payment must submit documentation annually as required by the Office of Film and Entertainment for determination of eligibility of claimed billing and determination of the amount of payment for which the company is eligible.~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(c) <u>Upon application and approval by the Department of Revenue, a taxpayer may sell or assign, in whole or in part, a tax credit granted under this section. The sale or assignment of any amount of the tax credit shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred amount of tax credit. The purchaser or assignee shall surrender the tax credit in the year acquired from the qualified production company and otherwise may carry the tax credit over subject to the same limitations on credit usage as the qualified production company awarded the tax credit. The purchaser may not sell, assign, or otherwise transfer the tax credit.</u> ~~A qualified relocation project that is certified by the Office of Film and Entertainment is eligible for a one-time incentive payment in an amount equal to 5 percent of its annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile or $200,000, whichever is less. A company applying for payment must submit documentation as required by the Office of Film and Entertainment for determination of eligibility of claimed billing and determination of the amount of payment for which the company is eligible.~~

(d) A qualified production <u>company that is not a corporation, as defined in s. 220.03(1)(e), shall make an election</u>~~, a digital-media-effects company, or a qualified relocation project applying for a payment under this section must submit documentation for claimed qualified expenditures~~ to the <u>Department of Revenue</u> or <u>distribute tax credits awarded under this section to its partners or members in proportion to</u>

the respective distributive share of such partners' or members' income or loss in the year in which such tax credits were approved. A tax credit granted under this section shall be carried forward only for a maximum of 5 years following the year in which the credit was approved ~~Office of Film and Entertainment~~.

(e) A qualified production applying for a tax credit award under this section must submit in a timely manner, but no later than August 15 of the state fiscal year following the state fiscal year in which claimed qualified expenditures were incurred, a single report from a certified public accountant based in this state, preapproved by the Office of Film and Entertainment, documenting the amount of claimed qualified expenditures to the Office of Film and Entertainment. ~~The Office of Film and Entertainment shall notify the Office of Tourism, Trade, and Economic Development whether an applicant meets the criteria for reimbursement and shall recommend the reimbursement amount. The Office of Tourism, Trade, and Economic Development shall make the final determination for actual reimbursement.~~

(5) MARKETING REQUIREMENTS.--The Office of Film and Entertainment shall ensure appropriate marketing materials, including promotions of this state as a tourist or filming destination, are required when appropriate to be included on any filmed entertainment as a condition of receiving a tax credit under this section. The Office of Film and Entertainment shall coordinate with VISIT Florida and other appropriate state entities for the development and implementation of marketing materials.

(6) ~~(5)~~ RULES ~~POLICIES AND PROCEDURES~~.--The Office of Tourism, Trade, and Economic Development shall adopt rules pursuant to ss. 120.536(1) and 120.54 ~~policies and procedures~~ to implement this section, including, but not limited to, rules specifying requirements for the application and approval process, records required for ~~submission for~~ substantiation of credit awards ~~for reimbursement~~, ~~and~~ determination of and qualification for credit awards, and marketing requirements for credit recipients ~~reimbursement~~.

(7) ~~(6)~~ FRAUDULENT CLAIMS.--An eligible entity or company that obtains a payment under this section through a claim that it knows is fraudulent is liable for reimbursement of the amount paid plus a penalty in an amount double the payment and reimbursement of reasonable costs, which penalty is in addition to any criminal penalty to which the entity or company is liable for the same acts. The entity or company is also liable for costs and fees incurred by the state in investigating and prosecuting the fraudulent claim. Any applicant who knowingly submits an application under this section that includes fraudulent information shall be liable for reimbursement of the reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent application.

(8) ~~(7)~~ ANNUAL REPORT.--The Office of Film and Entertainment shall provide an annual report for the previous fiscal year, due October 1, to the Governor, the President of the Senate, and the Speaker of the House of Representatives outlining the return on investment to the state on funds

expended pursuant to this section.

(9) REPEAL.--This section is repealed July 1, 2014.

Section 2. Subsection (5) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.--

(5) A license is not required of any individual providing makeup, special effects, or cosmetology services to an actor, stunt person, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment as a qualified production as defined in s. 220.192 ~~288.1254(2)~~. Such services are not required to be performed in a licensed salon. Individuals exempt under this subsection may not provide such services to the general public.

Section 3. This act shall take effect July 1, 2006.

Amendment(s)

Bill No. **1321**

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER ______

Council/Committee hearing bill: Tourism Committee
Representative Davis offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (r) is added to subsection (5) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

<u>(r) *Entertainment industry tax credits; authorization; eligibility for credits*.—Beginning July 1, 2006, any company engaged in this state in producing filmed entertainment, that has registered with the department under s. 212.08 to collect or remit sales or use tax and has satisfied the requirements enumerated in and has received credits under s. 220.192, may use</u>

the award of credits against the tax imposed by this chapter as provided by this section.

1.The credit shall be granted as a refund against state sales and use taxes reported on returns and remitted in the 12 months preceding the date of application to the department for the credit.

2. No company may be awarded more than $2 million in tax credits under this section and s. 220.192, unless the production is a high-impact television series as defined in s. 220.192(2)(b) in which case the production shall be eligible for a maximum tax credit award of $3 million.

3. The total amount of tax credits which may be granted for all programs approved under this paragraph and s. 220.192 is $25 million in any state fiscal year.

4. A company may use the tax credit against the tax liability imposed under this chapter, in whole or in part, and against the liability imposed under chapter 220, so long as the credit is actually applied only once.

5. The department may adopt rules to administer this paragraph, as provided by s. 220.192(6)(b).

Section 2. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.--

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186,

those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, ~~and~~ those enumerated in s. 220.187, and those enumerated in s. 220.192.

Section 3. Section 288.1254, Florida Statutes, is transferred and renumbered as section 220.192, Florida Statutes, and amended to read:

220.192 ~~288.1254~~ Entertainment industry financial incentive program; creation; purpose; definitions; application procedure; approval process; ~~reimbursement~~ eligibility; submission of required documentation; recommendations for credit award ~~payment~~; policies and procedures; fraudulent claims.--

(1) CREATION AND PURPOSE OF PROGRAM.--~~Subject to specific appropriation,~~ There is created within the Office of Film and Entertainment an entertainment industry financial incentive program. The purpose of this program is to encourage the use of this state as a site for filming and developing and sustaining the workforce and infrastructure ~~providing production services~~ for filmed entertainment.

(2) DEFINITIONS.--As used in this section, the term:

(a) "Filmed entertainment" means a theatrical or direct-to-video motion picture, a made-for-television motion picture teleproduction, a commercial, a music video, an industrial or educational film, a promotional video or film, a documentary film, a television pilot, a presentation for a television pilot, a television special, a television series, including, but not limited to, a drama, a reality, a comedy, a soap opera, a telenovela, a game show, and a miniseries production, or a digital-media-effects production by the entertainment industry to be sold or displayed in an electronic medium, excluding news shows and sporting events. As used in this paragraph, the term "motion picture" means a motion picture made on or by film, tape, or otherwise and produced by means of a motion picture camera, electronic camera or device, tape device, any combination of the foregoing, or any other means, method, or device now used or which may hereafter be adopted. As used in this paragraph, the term "digital-media-effects" means visual elements created through the modification of already existing or newly created visual elements for film, video, or animated media through the use of digital 2D/4D animation or painting, motion capture, or compositing technologies. ~~For purposes of this section, the term "filmed entertainment" does not include the electronic gaming industry or sporting events.~~

(b) "High-impact television series" means a production created to run multiple production seasons with an estimated order of at least seven episodes per season and qualified expenditures of at least $625,000 per episode.

(c) ~~(b)~~ "Production costs" means the costs of ~~real,~~ tangible~~,~~ and intangible property used and services performed primarily or customarily in the production, including preproduction and postproduction, of qualified filmed entertainment. Production costs generally include, but are not limited to:

1. Wages, salaries, or other compensation, including amounts paid through payroll service companies, for technical and production crews, directors, producers, and performers ~~who are residents of this state~~.

2. Expenditures for sound stages, backlots, production editing, digital effects, sound recordings, sets, and set construction.

3. Expenditures for rental equipment, including, but not limited to, cameras and grip or electrical equipment.

4. Expenditures for meals, travel, and accommodations~~, and goods~~ used in producing filmed entertainment ~~that is located and doing business in this state~~.

5. Expenditures for goods and services used in producing filmed entertainment.

(d) ~~(c)~~ "Qualified expenditures" means production costs incurred in this state within the current state fiscal year for goods purchased or leased from or services provided by ~~purchased, leased, or employed from a resident of this state or~~ a vendor or supplier who is located and doing business in this state~~,~~ or payments to employees of the production of filmed entertainment in this state who are residents of this state ~~but~~ excluding wages, salaries, and ~~or~~ other compensation paid to the two highest-paid employees of the production who are residents of the state.

(e) ~~(d)~~ "Qualified production" means filmed entertainment that meets or exceeds minimum ~~makes~~ qualified expenditures required in this state for the total or partial production of filmed entertainment. Productions that are deemed by the Office of Film and Entertainment to contain obscene content, as defined by the United States Supreme Court, are not qualified productions. ~~Also, a production is not a qualified production if it is determined that the first day of principal photography in this state occurred on or before the date of submitting its application to the Office of Film and Entertainment or prior to certification by the Office of Tourism, Trade, and Economic Development.~~

(f)~~(e)~~ "Qualified production company ~~relocation project~~" means a corporation, limited liability company, partnership, ~~corporate headquarters,~~ or other legal ~~private~~ entity engaged in production of filmed entertainment ~~that is domiciled in another state or country and relocates its operations to this state, is organized under the laws of this or any other state or country, and includes as one of its primary purposes digital media effects or motion picture and television production, or postproduction~~.

(3) APPLICATION PROCEDURE; APPROVAL PROCESS.--

(a) Any company engaged in this state in producing filmed entertainment may submit an application to the Office of Film and Entertainment for the purpose of determining qualification for an award of credits against the tax imposed by this chapter as ~~receipt of reimbursement~~ provided in this section. The Office of Film and Entertainment ~~office~~ must be provided information required to determine if the production is a qualified production and to determine the qualified expenditures, production costs, and other information necessary for the office to determine ~~both~~ eligibility for the tax credit ~~and level of reimbursement~~.

(b) ~~A digital media effects company in the state which furnishes digital material to filmed entertainment may submit an application to the Office of Film and Entertainment for the purpose of determining qualification for receipt of reimbursement authorized by this section. The office must be provided information required to determine if the company is qualified and to determine the amount of reimbursement.~~

~~(c) Any corporation, limited liability company, partnership, corporate headquarters, or other private entity~~

~~domiciled in another state which includes as one of its primary purposes digital-media-effects or motion picture and television production and which is considering relocation to this state may submit an application to the Office of Film and Entertainment for the purpose of determining qualification for reimbursement under this section.~~

~~(d)1. The Office of Film and Entertainment shall establish a process by which an application is accepted and reviewed and reimbursement eligibility and reimbursement amount are determined. The Office of Film and Entertainment may request assistance from a duly appointed local film commission in determining qualifications for reimbursement and compliance.~~

1.~~2.~~ The Office of Film and Entertainment shall develop a standardized application form for use in qualifying an applicant as ~~approving~~ a qualified production~~, a qualified relocation project, or a company qualifying under paragraph (a), paragraph (b), or paragraph (c)~~. The application form for qualifying an applicant as a qualified production must include, but need not be limited to, production-related information on employment, proposed total production budgets, planned expenditures in this state ~~which are intended for use exclusively as an integral part of preproduction, production, or postproduction activities engaged primarily in this state~~, and a signed affirmation from the applicant ~~Office of Film and Entertainment~~ that the information on the application form has been verified and is correct. The application form shall be distributed to applicants by the Office of Film and Entertainment or local film commissions.

2.~~3.~~ Within 10 business days after receipt of an application, the Office of Film and Entertainment shall review the application to determine if it contains all the information required pursuant to this subsection and meets the criteria set out in this section. The Office of Film and Entertainment shall qualify all applications that contain the information and meet the criteria set out in this section as eligible to receive a tax credit, or shall notify the applicant that the requirements for qualification have not been met. If the application is qualified, the Office of Film and Entertainment shall recommend approval of the maximum amount of the tax credit to be awarded to the Office of Tourism, Trade and Economic Development ~~The Office of Film and Entertainment must complete its review of each application within 5 days after receipt of the completed application, including all required information, and it must notify the applicant of its determination within 10 business days after receipt of the completed application and required information~~.

3.~~4.~~ Within 10 business days after receiving notice from the Office of Film and Entertainment of qualification of an applicant as a qualified production and recommended approval of the maximum amount of tax credit to be awarded, the Office of Tourism, Trade, and Economic Development shall certify the maximum tax credit award, if any. The certification shall be transmitted to the applicant and to the executive director of the Department of Revenue. The applicant shall be responsible for forwarding a certified application to the Department of Revenue. ~~Upon determination that all criteria are met for qualification for reimbursement, The Office of Film and Entertainment shall notify the applicant of such approval. the office shall also notify the Office of Tourism, Trade, and Economic Development of the applicant approval and amount of~~

~~reimbursement required. The Office of Tourism, Trade, and Economic Development shall make final determination for actual reimbursement.~~

4.~~5.~~ The Office of Film and Entertainment shall deny an application if it determines that:

a. The application is not complete or does not meet the requirements of this section; or

b. The tax credit amount ~~reimbursement~~ sought does not meet the requirements of this section ~~for such reimbursement~~.

(4) CREDIT ~~REIMBURSEMENT~~ ELIGIBILITY; SUBMISSION OF REQUIRED DOCUMENTATION; APPLICATION ~~RECOMMENDATIONS~~ FOR TRANSFER ~~PAYMENT~~.--

(a) *Tax Credit Award.*--A production of filmed entertainment that is qualified by the Office of Film and Entertainment and is certified by the Office of Tourism, Trade, and Economic Development is eligible for a tax credit for ~~reimbursement of up to~~ 15 percent of its qualified ~~qualifying~~ expenditures ~~in this state on a filmed entertainment program that demonstrates a minimum of $850,000 in total qualified expenditures for the entire run of the project, versus the budget on a single episode, within the fiscal year from July 1 to June 30. However, the maximum reimbursement that may be made with respect to any filmed entertainment program is $2 million. All reimbursements under this section are subject to appropriation~~.

(b) *Production spanning two fiscal years.*--A qualified production that starts in one fiscal year and finishes in the next fiscal year shall have all qualified expenditures from both fiscal years certified for the latter fiscal year. This does not apply to the commercials and music video queue described in paragraph (d).

(c) *Aggregate tax credit available.*--The aggregate amount of tax credits allowed under this section in any state fiscal year is $25 million. If the total amount of allocated tax credits applied for in any state fiscal year exceeds the aggregate amount of tax credits authorized annually under this section, such excess shall be treated as having been applied for on the first day of the next state fiscal year in which tax credits remain available for allocation. Provided that in fiscal year 2006-07, no more than an aggregate amount of $100 million in tax credits shall be allocated. In fiscal year 2007-08, the aggregate allocations shall not exceed $133 million. In fiscal year 2008-09, the aggregate allocations shall not exceed $166 million, and in fiscal year 2009-10 and thereafter, the aggregate allocations shall not exceed $200 million. At such time as $200 million of tax credits have been allocated, no additional tax credits shall be allocated.

(d) *Filmed entertainment queues.*--Tax credits awarded ~~Payments~~ under this section in a state fiscal year shall be made to qualified productions according to a production's principal photography start date, for those qualified productions having entered into the first queue as cited in subparagraph 1. or the second queue cited in subparagraph 2. within the first 2 weeks after the queue's opening. All other qualified productions entering into either queue after the initial 2-week openings shall be on a first-come, first-served basis ~~until the appropriation for that fiscal year is exhausted~~. ~~On February 1 of each year, the remaining funds within both queues shall be combined into a single queue and distributed based on a~~

~~project's principal photography start date. The eligibility of qualified productions may not carry over from year to year, but such productions may reapply for eligibility under the guidelines established for doing so. The Office of Film and Entertainment shall develop a procedure to ensure that qualified productions continue on a reasonable schedule until completion. If a qualified production is not continued according to a reasonable schedule or the Office of Film and Entertainment is notified that a qualified production will no longer be produced, the office shall withdraw its eligibility and reallocate the funds to the next qualified productions already in the queue that have yet to receive their full maximum or 15-percent financial reimbursement, if they have not started principal photography by the time the funds become available.~~

1. Film, television, and episodic queue.--Theatrical or direct-to-video motion pictures, made-for-television movies, ~~commercials, music videos,~~ industrial and educational films, promotional videos or films, documentary films, television specials, television series, including, but not limited to, miniseries and telenovelas, and digital-media-effects productions by the entertainment industry to be sold or displayed in an electronic medium that demonstrate a minimum of $625,000 in total qualified expenditures for the entire run of the project, which, for a television series, means a season even if the season is not completed in the same state fiscal year in which principal photography began, shall have their own separate queue established, and such queue shall have dedicated to it 60 percent of all available tax credits in any state fiscal year for which this section applies ~~of the state incentive money~~. The maximum tax credit award that may be made from this queue for

any single production is $2 million, unless the production is a high-impact television series, in which case the production shall be eligible for a maximum tax credit award of $3 million, provided such production meets the other criteria of this section. On March 1 of each year, the remaining tax credits within this queue shall be merged into a general queue and may be used for other purposes of this section as determined by the Office of Film and Entertainment. A television series, including a qualified high-impact television series, is not eligible for a tax credit award under this section after its fifth production season. A qualified high-impact television series shall be allowed first position in this queue for its first five production seasons if the application is received by the Office of Film and Entertainment within the first 2 weeks after the queue's opening. A qualified high-impact television series must file an application for each fiscal year in which it is eligible to receive the credit, unless otherwise provided in this section.

2. Television pilot queue.--Television pilots and~~,~~ presentations for television pilots for television series intended to be shot in this state and~~, or television series, including, but not limited to, drama, reality, comedy, soap opera, telenovela, game show, or miniseries productions, by the entertainment industry to be~~ sold or displayed in an electronic medium that demonstrate a minimum of $625,000 in total qualified expenditures for the pilot episode or presentation shall have their own separate queue established, and such queue shall have dedicated to it 20 ~~40~~ percent of all available tax credits in any given fiscal year for which this section applies ~~of the state incentive money~~. The maximum tax credit award that may be

made from this queue for any single project is $2 million. On March 1 of each year, the remaining tax credits within this queue shall be merged into a general queue and may be used for other purposes of this section as determined by the Office of Film and Entertainment.

3. Commercials and music video queue.--Commercials and music videos by the entertainment industry to be sold or displayed in an electronic medium that demonstrate a minimum of $500,000 in combined total qualified expenditures from a production company during the state fiscal year with a minimum of $75,000 in qualified expenditures for each production shall have their own separate queue established. Such queue shall have dedicated to it 20 percent of available tax credits in any given state fiscal year for which this section applies. The maximum tax credit award that may be made from this queue for any single production company is $500,000 for a state fiscal year. On April 1 of each year, the remaining tax credits within this queue shall be merged into a general queue and may be used for other purposes of this section as determined by the Office of Film and Entertainment.

(e) *Loss of eligibility; reallocation of tax credits.*--If a qualified production is not continued according to a reasonable schedule or the Office of Film and Entertainment is notified that a qualified production will no longer be produced, the Office of Film and Entertainment shall withdraw its eligibility and reallocate the tax credits to the next qualified productions already in the queue that have yet to receive their full tax credit, if they have not started principal photography by the time the tax credits become available.

(f) *Verification of tax credit award.*--The Office of Film and Entertainment shall develop a process by which a qualified production that has been certified by the Office of Tourism, Trade, and Economic Development, in a timely manner after production ends and after making all of its qualified expenditures, shall submit verifying data to the Office of Film and Entertainment to substantiate each qualified expenditure. The Office of Film and Entertainment shall report to the Office of Tourism, Trade, and Economic Development the final verified amount of actual qualified expenditures made by the qualified production. The Office of Tourism, Trade, and Economic Development shall then notify the executive director of the Department of Revenue that the qualified production has met all requirements of the incentive program and shall recommend the final amount of the tax credit.

(g) ~~(b)~~ *Use of tax credit; carry forward.*--The tax credit available under this section shall only be surrendered in satisfaction of the tax owed by a qualified production company under this chapter and only up to the face amount of the credit. If the qualified production company cannot use the entire tax credit in the state fiscal year in which the credit is approved, any excess may be carried over to a succeeding state fiscal year. A tax credit granted under this section and applied against taxes imposed under this chapter may be carried forward only for a maximum of 5 state fiscal years following the state fiscal year in which the credit was approved. ~~A digital media effects company in the state which furnishes digital material to filmed entertainment may be eligible for a payment in an amount not to exceed 5 percent of its annual gross revenues on qualified expenditures as defined in paragraph (2)(c) before~~

~~taxes or $100,000, whichever is less. A company applying for payment must submit documentation annually as required by the Office of Film and Entertainment for determination of eligibility of claimed billing and determination of the amount of payment for which the company is eligible.~~

(h) ~~(e)~~ *Transfer of tax credits.*--Upon application to and approval by the Department of Revenue, a taxpayer may sell or assign, in whole or in part, a tax credit granted under this section. The sale or assignment of any amount of the tax credit shall not be exchanged for consideration received by the taxpayer of less than 85 percent of the transferred amount of tax credit. The purchaser or assignee shall surrender the tax credit in the state fiscal year acquired from the qualified production company and otherwise may carry the tax credit over subject to the same limitations on tax credit usage as the qualified production company awarded the tax credit. The purchaser may not sell, assign, or otherwise transfer the tax credit. No tax credits granted by this section may be sold or assigned, in whole or in part, until all credits the taxpayer is eligible to use under this chapter and chapter 212 are exhausted. The Department of Revenue may adopt rules to administer this paragraph, as provided in paragraph (6)(b). ~~A qualified relocation project that is certified by the Office of Film and Entertainment is eligible for a one-time incentive payment in an amount equal to 5 percent of its annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile or $200,000, whichever is less. A company applying for payment must submit documentation as required by the Office of Film and Entertainment for determination of eligibility of claimed billing and~~

~~determination of the amount of payment for which the company is eligible.~~

(i) ~~(d)~~ *Non-corporation distribution of tax credits.*--A qualified production company that is not a corporation, as defined in s. 220.03(1)(e), shall make an application~~, a digital media effects company, or a qualified relocation project applying for a payment under this section must submit documentation for claimed qualified expenditures~~ to the Department of Revenue to distribute tax credits awarded under this section to its partners or members in proportion to the respective distributive share of such partners' or members' income or loss in the state fiscal year in which such tax credits were approved. A tax credit granted under this section and applied against taxes imposed under this chapter shall be carried forward only for a maximum of 5 state fiscal years following the state fiscal year in which the credit was approved ~~Office of Film and Entertainment~~. The Department of Revenue may adopt rules to administer this paragraph, as provided in paragraph (6)(b).

(j) A company may use the tax credit against the tax liability imposed under this chapter, in whole or in part, and against the liability imposed under chapter 212.

~~(e) The Office of Film and Entertainment shall notify the Office of Tourism, Trade, and Economic Development whether an applicant meets the criteria for reimbursement and shall recommend the reimbursement amount. The Office of Tourism, Trade, and Economic Development shall make the final determination for actual reimbursement.~~

(5) MARKETING REQUIREMENTS.--The Office of Film and Entertainment shall ensure appropriate marketing materials,

including promotions of this state as a tourist or filming destination, are required when appropriate to be included on any filmed entertainment as a condition of receiving a tax credit under this section. The Office of Film and Entertainment shall consult with appropriate entities for the development and implementation of marketing materials.

(6)~~(5)~~ RULES ~~POLICIES AND PROCEDURES~~.—

(a) The Office of Tourism, Trade, and Economic Development shall adopt rules pursuant to ss. 120.536(1) and 120.54 ~~policies and procedures~~ to implement this section, including, but not limited to, rules specifying requirements for the application and approval process, records required for ~~submission for~~ substantiation of credit awards ~~for reimbursement~~, ~~and~~ determination of and qualification for credit awards, and marketing requirements for credit recipients ~~reimbursement~~.

(b) The Department of Revenue may adopt rules to administer the provisions of this section, including rules governing the manner and form of documentation required to claim tax credits granted or transferred under this section, and may establish guidelines as to the requisites for an affirmative showing of qualification for tax credits granted or transferred under this section.

(7)~~(6)~~ FRAUDULENT APPLICATION AND CLAIMS.—(a) Any applicant who submits an application under this section that includes fraudulent information shall be liable for reimbursement of the reasonable costs and fees associated with its review, processing, investigation, and prosecution.

(b) An eligible entity or company that obtains a credit ~~payment~~ under this section through a claim that it knows is fraudulent is liable for reimbursement of the credit ~~amount paid~~

plus a penalty in an amount double the credit ~~payment~~ and reimbursement of reasonable costs, which penalty is in addition to any criminal penalty to which the entity or company is liable for the same acts, plus interest. The entity or company is also liable for costs and fees incurred by the state in investigating and prosecuting the fraudulent claim.

(8) ~~(7)~~ ANNUAL REPORT.--The Office of Film and Entertainment shall provide an annual report for the previous fiscal year, due October 1, to the Governor, the President of the Senate, and the Speaker of the House of Representatives outlining the return on investment to the state on tax credits awarded ~~funds expended~~ pursuant to this section.

(9) REPEAL.--This section is repealed July 1, 2014.

Section 3. Subsection (5) of section 577.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.--

(5) A license is not required of any individual providing makeup, special effects, or cosmetology services to an actor, stunt person, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment as a qualified production as defined in s. 220.192 ~~288.1254(2)~~. Such services are not required to be performed in a licensed salon. Individuals exempt under this subsection may not provide such services to the general public.

Section 4. This act shall take effect July 1, 2006.

=============== T I T L E A M E N D M E N T ============

Remove lines 3 through 11 and insert:

development; amending s. 212.08, F.S.; providing for entertainment industry tax credits; providing authorization and eligibility for credits; providing for rules; amending s. 220.02, F.S.; adding reference to s. 220.192, F.S., in the order of application of credits against corporate income tax or franchise tax; transferring, renumbering, and amending s. 288.1264, F.S.; revising the entertainment industry financial incentive program to provide corporate income tax credits to qualified entertainment entities rather than reimbursements from appropriations; revising provisions relating to definitions, creation and scope, application procedures, approval process, eligibility, required documents, qualified productions, rules, fraudulent application and claims, and annual reports; providing criteria

Entertainment Industry
Infrastructure
Interim Project Report

The full text of the Florida Entertainment Industry Infrastructure Interim Project Report is available online. Please visit the Tourism Committee's webpage at www.myfloridahouse.gov.
The report can be found under "Interim Projects."

FLORIDA'S ENTERTAINMENT INDUSTRY INFRASTRUCTURE

Executive Summary

Purpose

The purpose of the interim project is to review the current depth and breadth of the entertainment industry in the state and to identify issues potentially impacting the long-term growth potential of the industry. The information provided is to assist Members to have a better understanding of the state's entertainment industry sector and the needs of that industry to continue to grow and be competitive in the future. This will entail not only looking at current incentives that bring productions to the state, but also at how the state can grow the industry base and product in Florida.

Background

The Office of Film and Entertainment (OFE) in the Governor's Office of Tourism, Trade and Economic Development, created in 1999,[1] is responsible for promoting and developing the state's entertainment industry. Included in this responsibility, among other things, is the promotion and marketing of the state as a site for production; the promotion of our indigenous entertainment industry and producers; and servicing businesses, communities, organizations, and individuals engaged in entertainment industry activities. These activities are to be guided by the statutorily required 5-year strategic plan developed by the OFE with the advice of the Florida Film and Entertainment Advisory Council.[2]

In 2000, 2003 and 2005, incentives were provided statutorily for the entertainment industry to encourage the state as a site for production. The first incentive involved changing a refund of sales and use taxes to an upfront exemption for qualified productions.[3] The next was a financial incentive in 2003 to encourage the use of the state as a site for filming, and for providing production services for, motion pictures, made-for-television movies, commercials, music videos, industrial and educational films, and television programs by the entertainment industry. The incentive also provided a mechanism to encourage relocation of entertainment industry businesses to the state; however, no relocation projects have received funding. The incentive was modified in

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[1] The Office of the Film Commissioner was created by Ch 99-251, LOF, and placed within the Office of Tourism, Trade and Economic Development for the purpose of developing and promoting the state's entertainment industry. Although created on July 1, 1999, the Film Commissioner was not hired until late September, 1999.
[2] See s. 288.1252, F.S., for composition and responsibilities for advisory council.
[3] A "qualified production company" is any production company engaged in this state in the production of motion pictures, made-for-TV motion pictures, television series, commercial advertising, music videos, or sound recordings that has submitted a properly completed application pursuant to s. 288.1258, F.S.

2005 to provide for qualifying and distributing funds according to placement in queues. The financial incentive fund received funding in FY 2004-05 of $2.45 million and in FY 05-06 of $10 million. The incentives are available for both indigenous and out-of-state film productions.

Since the statutory purpose of the entertainment industry incentive fund is to encourage the use of this state as a site for filming and providing production services for filmed entertainment, the law defines in great specificity the terms "filmed entertainment," "motion picture," and "digital media effects." These definitions govern eligibility under the incentive. For purposes of the incentive, the law specifically excludes the electronic gaming industry and sporting events from the definition of "filmed entertainment."[4]

The change in the tax rebate to an upfront exemption as well as the addition of the financial incentive were, in part, in response to international and other state incentives being used to capture a greater share of the entertainment industry market. In the late 1990's, the concern was primarily with productions running away to the newly developed Canadian market with its very lucrative national and provincial incentives and exchange rate. Today, however, the term "runaway production" extends beyond Canada and other foreign markets and is often used to refer to productions going to other states. The use of financial incentives and other inducements by states has greatly increased over the last five years as more states are trying to encourage production and relocation of entertainment industry segments.[5]

Florida, once considered to be the third largest production center in the United States, is now, according to the Motion Picture Association of America (MPAA), considered to be in the top four or five in production in the United States.[6]

Because of the increasing number of incentives aggressively directed toward lowering production expenditures, increasing infrastructure capability (facility, crew, and vendor), and relocation of industry segments, and the concern over the state's ability to compete in maintaining or increasing its short-term and long-term market share of the entertainment industry, several questions were raised concerning our law, efforts, and plan for the future.

Questions that have arisen concerning the long-term growth potential of the entertainment industry in the state are as follows:

- As we continue to raise our incentive amount for production, how do we compare with what other states are doing to increase their market share? What, if anything, do we need to consider doing in order to maintain or increase our market share? Is it worth our investment long-term?

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[4] See s. 288.1254(2)(a), F.S., for definitions. Electronic gaming is the creative development and physical creation of video games.

[5] Incentives are discussed later in the report. For a detailed chart of all state incentives see Appendix C.

[6] MPAA member companies include: The Walt Disney Company; Metro-Goldwyn-Mayer Studios, Inc.; Paramount Pictures Corporation; Sony Pictures Entertainment, Inc.; Twentieth Century Fox Film Corporation; Universal City Studios, LLP; and Warner Bros. Entertainment, Inc. MPAA conducts its own survey of employment in the industry in the six major studios and independent production companies.

- What are our state's entertainment industry infrastructure needs, short-term and long-term? How and when should these be addressed?
- What, if anything, is being done to encourage the relocation of entertainment industry companies to Florida? What should be done? What are other states doing?
- What is being done and what needs to be done to grow our indigenous entertainment industry? What are or should be the long-term goals of the state in this area?
- Does the Governor's Office of Film and Entertainment have sufficient staff and funding to meet the statutory requirements of the office and be competitive with other markets in its funding and staffing?

These questions will be addressed in the report.

Methodology

In order to answer questions outlined above, the committee staff did the following:

- Reviewed existing Florida law governing functions and responsibilities of the Office of Film and Entertainment, the Florida Film and Entertainment Advisory Council, and incentives afforded to the entertainment industry.
- Reviewed reports relating to the entertainment industry in the state.
- Surveyed all state film offices throughout the country to obtain information on incentives, office size and funding, both in writing and by telephone.
- Interviewed Departments of Revenue, Taxation, etc. in various states regarding tax incentives.
- Reviewed other state laws governing incentives.
- Reviewed other state reports governing the entertainment industry in their states.
- Reviewed international reports on the globalization of the market.
- Reviewed reports governing future market trends.
- Interviewed the Florida Film and Entertainment Commissioner.
- Surveyed industry representatives in Florida, including, but not limited to, members of the Florida Film and Entertainment Advisory Council, Film Florida, and state film and entertainment schools.

Findings

<u>Incentives</u>

General Comments:

Incentives to attract industry to an area have become an accepted practice especially for industries that infuse large sums of money into a state's economy and the rate of return on dollars invested is significant. The multi-faceted entertainment industry is no different from any other industry sector in this respect.

Entertainment industry production is an extremely attractive business. Even small productions may employ hundreds of people. The bulk of the job creation is below-the-line which are well-paid jobs that typically include health insurance and pension benefits.[7]

Unlike other industries that make decisions regarding location only once, productions are very flexible in decisions regarding location, with the exception of television series that have been long-running which tend to be more like regular businesses with considerations being given to established set locations. Other aspects of the entertainment industry, including electronic media and gaming, appear to be more akin to traditional industry.

International Impact on Incentives:

Since the 1990's, incentives being offered by other countries, such as Canada, New Zealand, United Kingdom, Australia, and other European and African countries, have continued to grow.

Often incentives are used to lure business into areas with little or no developed infrastructure, seeking to bring in resources while at the same time developing an indigenous infrastructure.

Over the years, even the more established global markets are becoming concerned about maintaining market share and production "running away" if incentives are not provided. An example is in the United Kingdom where there is concern about the increasingly competitive global entertainment industry market and its potential effect on the retention, let alone, the growth of its own industry. Concern is that with the loss of those workers who are highly mobile, the less mobile, yet well compensated, workforce left behind would have skills and services that would no longer be required. This would create an economic loss of wages and benefits that would have a significant impact.

National Response:

The "runaway" production economic loss to the United States, touted as being $10.3 billion in 1998,[8] did eventually lead to passage by Congress of the American Jobs Creation Act in 2004 which was viewed as a step in stemming runaway production and preserving and creating jobs both within the entertainment industry and related industries.

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[7] According to statistics provided by the Florida Agency for Workforce Innovation, the average wage in 2004 was $52,972, excluding benefits. The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts (IATSE) suggests that wages are even higher than those reported by AWI.

[8] The Economic Impact of US Film and Television Runaway Production, The 1999 Monitor Report, commissioned by Screen Actors Guild & Directors Guild of America, prepared by Monitor Company, June 1999.

Florida Entertainment Industry Incentives:

Currently, Florida offers two incentives specifically for the entertainment industry, as defined in ss. 288.1251 and 288.1254, F.S.: a point of sale sales and use tax exemption and a financial incentive.

The purpose of the financial incentive program is to encourage the use of Florida as a site for film and video production, to advocate the hiring of Florida residents as staff, cast or crew and to support and encourage the use of other Florida services and equipment companies in the production of filmed entertainment. The program is also to encourage the relocation to and/or expansion of digital-media-effects companies and motion picture, television production and post production companies in Florida.

According to information provided by the Office of Film and Entertainment from data gathered on qualified productions receiving sales and use tax exemptions through a certificate of exemption and for qualified productions receiving incentive funding through the incentive reimbursement program, the rate of return on the state's investment is substantial. The latest data on the point of sale sales and use tax exemption for calendar year 2005 showed the total job creation attributable to the incentive as 36,867 and a return on investment of 66:1. The entertainment industry financial incentive return on investment on the $10 million appropriation for FY 05-06 is estimated to be 7.4:1 with estimated total in-Florida production expenditure of $73.9 million with Florida resident salaries accounting for more than $36.6 million.

Questionnaire Responses on Adequacy of Incentive:[9]

Over 55% specifically indicated that the incentive amount needed to be increased to be more competitive with other states. Others did not indicate an increase in funds but did state that Florida needed to review what other states had done, such as Louisiana, Georgia, North Carolina, and New Mexico, to encourage both production coming into their states as well as indigenous production and to replicate what would benefit Florida. Specific suggestions are included on page 11. For those responding to the question relating to business relocation, 67% was unaware of any initiative by the state to relocate entertainment industry companies. Additionally, it was stated that the current economic development tools used by Enterprise Florida, Inc. (EFI) and local economic development agencies are appropriate but that the industry is not being properly targeted by EFI.

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[9] Whenever the term "questionnaire" is used in the report it refers to the Tourism Committee questionnaire on the entertainment industry that was used to survey more than 350 industry representatives in Florida, including, but not limited to, members of the Florida Film and Entertainment Advisory Council, Film Florida (an organization of Florida Film Commissioners and persons working at all levels in the industry), and state film and entertainment schools. The questions used are those listed under the discussion on background of the report. See Appendix A for a copy of the questionnaire.

Recommendations for Change to the Entertainment Industry Financial Incentive Proposed by the Florida Film and Entertainment Advisory Council:

The Florida Film and Entertainment Advisory Council (FFEAC), in conjunction with Film Florida, has been reviewing the current law to determine what changes, if any, should be proposed to the Office of Film and Entertainment, the Governor, and the Legislature in order to improve the current financial incentive. Based upon a series of public meetings, changes were approved for recommendation at the December 9, 2005 meeting. These changes address concerns relating to commercial production, television pilots and episodes, minimum expenditure requirements, encouraging independent production, application process, and method of funding of the incentive, such as using transferable tax credits. A discussion of the changes is on pages 12 and 13 of the report.

Incentives in Other States:

The impact of the incentives being offered in other states is difficult to analyze and compare from state to state since the methodology for determination of the amount of production in a state and the determination of the overall impact is not shared between states. However, the State of Illinois is touting a 200% increase in production in the state after its implementation of its income tax incentive and Louisiana has increased its production from $11.8 million to over $354 million in two years.

Some states without a strong infrastructure, such as Louisiana, are using the incentives to lure business while infrastructure is being brought in from outside until a base can be built in the state.

Louisiana and seven other states have enacted transferable tax credits that are assignable, can be sold, or can be carried forward for a number of years. Depending upon the state, these credits are offered to production companies on investments (LA, GA), payroll (LA, GA, IL, MA), and production costs (LA, AZ, GA, MA, MO, PA, RI). Nine states offer income tax refunds, rebates, or credits on payroll, production costs, or investments. New Mexico and New Jersey offer low interest loans or loan guarantees to encourage film production. Three states, Louisiana, Oklahoma, and South Carolina, offer incentives for investment in facilities, productions, and certain entertainment businesses.

<u>Florida's Entertainment Industry</u>

Overview:

The entertainment industry in Florida is a $3.9 billion industry.[10] In 2004, the latest date for which statistics are available, 33,897 Floridians were employed at 5,599 businesses in the state. The average annual wage of these employees, excluding benefits, was

[10] <u>An Economic Assessment of the Florida Film and Entertainment Industry</u>, Executive Summary, MGT of America, Inc., December 31, 2000, p. i.

$52,972.[11] The economic impact cited in this statement does not take into account any impact that the industry has on ancillary businesses that benefit from entertainment industry production nor does it include any impact on tourism, which is considered as being significant in such states as California and New York.

According to Florida's Film and Entertainment Commissioner, Florida has multiple production centers with varied looks that have infrastructure, vendors, and deep crew base unlike states like Louisiana and New Mexico that have been able to attract industry business through their aggressive incentives and have been able to build infrastructure and attract vendors and crews to relocate. Additionally, having the production centers, infrastructure and crew serves as an attractor to production in the state, whether it is bringing producers in from outside the state or whether it is being able to keep our indigenous productions from leaving the state.

But what about the long-term view of what the industry should encompass and the direction that the state should take in its efforts to grow its own industry and capture or be influential in market segments in the future? How should the industry be defined? These questions need to be addressed in the strategic plan of the Governor's Office of Film and Entertainment. The PricewaterhouseCoopers study, "Global Entertainment & Media Outlook: 2005-2009," gives some indication of industry segment growth and food for thought. The report states that over the next five years, except for satellite radio:

- video games will be the fastest-growing segment, at a projected 12.9% compound annual increase, fueled by new console games associated with the next-generation hardware and an expanding online and wireless market;
- recorded music will be the next fastest growing segment, at 8% compounded annually, in part due to licensed digital distribution and mobile music; and
- filmed entertainment will expand at a 6.6% compounded annual increase, in part due to continued growth of DVD sales.[12]

Infrastructure:

For the purposes of this section, the term "infrastructure" includes not only the crew base, the physical structures, such as soundstages, and businesses that support pre-production, production, and post production efforts in the state but also includes film festivals, post secondary schools devoted to the film and entertainment industry educational programs, local film offices, and the state Office of Film and Entertainment.

Infrastructure – Film Offices

The film offices at the local level and the state Governor's Office of Film and Entertainment serve as the marketing, business development and industry servicing arm

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[11] Florida Agency for Workforce Innovation, Labor Market Statistics. See Appendix H for the chart for 2001 to 2004 statistics on the industry.
[12] Global Entertainment and Media Outlook: 2005-2009 – Forecasts and economic analyses of 14 industry segments, Sixth Annual Edition – June 2005, PricewaterhouseCoopers, pp. 29-33.

to growing and maintaining the health of the entertainment industry. Florida has 21 full-service local film commission offices and 34 local film commission contacts/liaisons. The size, budget, and governmental location vary throughout the state.

Infrastructure – Film Festivals

As of October 20, 2005, there are 46 film festivals in Florida. The Florida Film Festival in Orlando is ranked as the 8th most important in the world.[13]

Infrastructure – Crew Base

According to the 2003 Economic Research Associates study of the motion picture industry in Florida, Florida had all the necessary equipment, services, and stages to accommodate any type of production. Yet, the study went on to state that because of the globalization of the industry and incentives being offered, the amount of external production was decreasing. The decreased production activity had forced Florida's crew base to become more mobile and frequently work out-of-state. The report stated that this translated into lost dollars for the state and the creation of a "fragmented" labor force.[14]

Today, according to the Office of Film and Entertainment, there are 3 to 4 full crews in Miami, 2 in Orlando, 1 in the Tampa area, and 1 in Jacksonville. According to the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts (IATSE), Local 477, Florida has the largest crew base, approximately 1000 members, in the U.S. outside New York or California.[15] Yet, the crew base stays small because as crew gains experience, they leave to go where work is plentiful (such as Louisiana). Often crew members relocate to other areas when work is not available in the state. It is interesting to note that this comes at a time when work has been increasing in South Florida because of the state and local incentives.[16]

Other states, such as Illinois, Louisiana and New Mexico, have encouraged the training of residents through incentives or requirements for certification. New York City also is offering money to assist independent filmmakers through funds to offset costs of training crew. See page 29 of the report for details.

Infrastructure – Business:

According to information provided by the Agency for Workforce Innovation, the number of entertainment industry businesses in the state has increased from 4,412 in 2001 to 5,599 in 2004.[17]

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[13] See Appendix I for a complete listing of Florida film festivals.
[14] Project Report Assessment of the Florida Motion Picture Industry, Vol. I, by Economics Research Associates, February 2003, pp. V-34 and V-35.
[15] IATSE, the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts, is the labor union representing technicians, artisans and craftspersons in the entertainment industry, including live theatre, motion picture and television production, and trade shows.
[16] Responses from Greg Kasper, George Cercihiai, and Joe Humphries of IATSE.
[17] See Appendix H.

Concerns raised in the questionnaire responses involved the relocation this past year from Florida to New Orleans of Lee Lighting, the lighting and grip equipment house for Panavision which is the maker of the 35mm cameras used on many feature film sets, Disney's animation arm in Orlando moving to another country, and the move of Telemundo's Mun 2 from Miami to Los Angeles. Respondents were concerned about the impact this would have on new businesses locating to the state, with the perception that business should not relocate here, if others are leaving. Responses to questions related to infrastructure and indigenous industry consistently cited the need to fill the gap in businesses related to distribution and financing.

The states of Hawaii, Louisiana, and South Carolina provide incentives to encourage business growth. These incentives are in addition to any specific incentives offered to productions. See page 30 of the report for details.

Infrastructure – Facilities:

In the five year strategic plan of the Office of Film and Entertainment, sound stages was listed as number two out of a list of the top ten support services needed in Florida.[18]

According to the 2003 study for the Office of Film and Entertainment on the status of the entertainment industry, the key piece of industry-specific infrastructure for the motion picture production industry is soundstages. In 2003, Mid-Florida and Southeast Florida were the only regions in the state with purpose-built dedicated soundstage space. Although the total square footage of soundstages in the Southeast composed about 50% of the entire available sound stage space in the state and over 60% of the total number of stages, the Mid-Florida region stages were considerably larger.[19]

The desire to have more and different types of soundstages was mentioned by the majority of film commissioners who responded to the questionnaire and was cited by other respondents as well. Some respondents, however, stated that if business increases, the need for facilities will take care of itself. Mr. Jeff Peel, Director of the Miami-Dade Mayor's Office of Film and Entertainment, stated that the problem for Florida's entertainment industry infrastructure is that there is either too much or too little because of the ebb and flow of the industry. He continued to state that business had been turned away because of the lack of facilities; however, building new infrastructure runs the risk of enduring periods when no production is taking place. Without the assurances of stable use, new facilities are not being built.

The states of Louisiana, Oklahoma, and South Carolina offer income tax credits to companies building or investors in the building of production facilities. Louisiana and Oklahoma provide incentives for both motion picture and music production facilities. Delaware offers a 15 year ad valorem tax exemption for motion pictures and plants on

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[18] Five-Year Strategic Plan for the Development of Florida's Film & Entertainment Industry, Office of the Film Commissioner, June 30, 2000, p. 48.
[19] Assessment of the Motion Picture Industry, Economics Research Associates, February 2003, pp. IV-56 through IV-58.

lands, buildings and chattel. More information on these incentives can be found on pages 17 through 24 of the report, or for more details go to Appendix C.

Infrastructure – Education:

One of the questions posed by the questionnaire dealt with what role the state's post-secondary schools could play in addressing the issues related to the maintenance and growth of the entertainment industry in Florida.

In order to understand what role these institutions play and role or roles they could play in the future, it is necessary to examine their role in the state's entertainment infrastructure. As part of the infrastructure base for training the entertainment workforce at all levels and in all fields, it is important to understand how many post-secondary programs are in Florida, how many students are enrolled, and how many secondary schools have programs in the entertainment area. It is also important to note that Florida is recognized for the caliber of its educational programs with programs such as the Florida State University Film School and the University of Florida's College of Telecommunications being rated among the top five film schools in the United States.

In all, 60 post-secondary institutions provide educational programs in various areas of the entertainment industry and 20 school districts offer classes in fields related to the industry. For more detailed information see pages 32 and 33 of the report and Appendix J.

Responses to Questionnaire – General Respondents

The majority of respondents wanted the schools to encourage students to remain in Florida and work. At the same time, respondents noted that in order to keep students here there had to be sufficient work and possibly some form of incentive to lure these new filmmakers to remain.

Responses to Questionnaire – School Respondents

The schools provided a variety of ways in which they could work to help train and educate the existing and future entertainment industry workforce. At the same time, the schools identified the need for funding to accomplish some of the suggestions offered. One suggestion was to establish cooperative programs between institutions designed to focus on specific needs of the workplace or on critical needs in the professional infrastructure. The listing of some of the ideas is on pages 33 and 34 of the report.

Additionally, Florida State University's Film School is encouraging its successful alumni to bring their talents and filmmaking ideas back to the state through the creation of Torchlight Pictures, a production company that will produce original media in the state.

Indigenous Industry:

The indigenous industry in Florida is comprised of all aspects of what has been discussed under the heading of infrastructure as well as filmmakers and other creatives in the state involved in the development and production of entertainment.

According to Paul Sirmons, Florida's Film and Entertainment Commissioner,

> We cannot think of ourselves as a state that attracts a film to come in spend money, and leave. Certainly that is part of the equation. But the long picture should have us thinking of Florida as a creator and producer of entertainment, and as a distributor of entertainment – to the USA and to the world.[20]

Respondents to the questionnaire on the entertainment industry provided similar views. They also cited the need for distribution and financing access for independent productions, creation of a low interest loan program, retention of Spanish language programs, professional retraining programs, development of programs to help young filmmakers, getting out in front on the digital media and gaming industry and claiming it while we can, and marketing the industry aggressively.

In addition to other incentives offered by states, the states of New Jersey, New Mexico, Oklahoma, Rhode Island and South Carolina provide incentives in the form of loan guarantees, no interest guaranteed loans, or income tax incentives for investments in in-state productions. See page 35 of the report or pages 17-24 for more detail on these incentives.

<u>Office of Film and Entertainment</u>

This section of the report pertains to the specific questions posed in the report related to the Governor's Office of Film and Entertainment. The section briefly reviews the Governor's Office of Film and Entertainment responsibilities, staffing, and funding. The staffing and funding of the office is compared to that of other states to provide a point of reference for our ranking with competitor states.

The Office of Film and Entertainment is responsible for developing, marketing, promoting, and providing services to the state's entertainment industry. The primary duties and responsibilities of the office are delineated in ss. 288.1251, 288.1253, 288.1254, and 288.1258.[21] Administration of the two financial incentives for the encouraging growth of the entertainment industry in the state are two of the more recent

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[20] Response of Paul Sirmons, State Film and Entertainment Commissioner, to House Tourism Committee questionnaire on entertainment industry.

[21] <u>See</u> Appendix K for a copy of the statutory responsibilities of the Office of Film and Entertainment and a breakout of the core services.

responsibilities added to the office.[22] Additional duties of the office relating to the Florida Film and Entertainment Advisory Council are delineated in s. 288.1252, F.S.

The requirements for submission of annual reports to the Legislature have been fulfilled in a timely fashion and the office has consistently met or exceeded its performance standards related to number of leads generated, number of projects worked, number of scouts/site visits facilitated, percent of new projects resulting in new business, and percent of new projects resulting in business.[23]

The office, by law, is responsible for developing and implementing an ongoing five year strategic plan. The plan was developed and expired in 2005. Staff has not seen a copy of an updated annual strategic plan nor a long range plan for the growth and development of the industry sector in the state.

On November 8, 2005, the new Film and Entertainment Commissioner spoke to the Tourism Committee and delineated the following goals for the OFE:

- Support and Strengthen the Entertainment Industry Financial Incentive and Make It Work Across the Production Spectrum;
- Brand the State of Florida to the Outside Film World;
- Support Our Film Festivals On a Wider Basis Around the State;
- Build the Standings of Our Film Schools, and Interface Them With Each Other and the Real World of Filmmaking in Florida;
- Attract Key Foreign Production to Florida; and
- Build Film, Video and Digital Infrastructure – by increasing production demand in Florida.

Staffing and Funding

In 1999, when the OFE was created and there were no incentives as part of the responsibility of the office, three staff positions were provided and a total budget of $524,420. Today, there are four full-time positions and 1 OPS, with a total budget of $928,296. The 5 year strategic plan developed for OFE in 2000, indicated that the goal for staff and budget for FY 2004-05 was 13 FTE and 8 OPS with a continuation budget of $2.9 million.

When compared with 16 states comprising states in the Southeast and some of the major competitor states in the entertainment industry, both Florida and Alabama tied for the fifth lowest number of staff. Part time or OPS staff were not considered since all states did not report this level of staffing. A full listing of all states and their staffing can be found in Appendix M.

For those who responded to the questions related to the sufficiency of staff and funding of the Office of Film and Entertainment to meet current and future responsibilities, 97%

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[22] The point of sale sales tax exemption became effective January 1, 2001. The financial incentive was enacted in 2003 but was not funded until FY 04-05.

[23] <u>See</u> Appendix L for a copy of OFE performance for 2001-02, 2002-03, and 2003-04.

indicated that the staffing level was not sufficient. Of those who responded to the question as to whether there was a need for a staff person in New York City like is in Los Angeles, 65% responded affirmatively, 23% responded negatively.

Conclusions

The following conclusions are made from the findings of the report and are provided for the consideration of the Members:

- Other states are aggressively pursuing various aspects of the entertainment industry through a variety of incentives. These incentives have and will continue to impact the amount of production that the state is able to bring in and the amount that we are able to keep in the state.

- Some of the states with aggressive incentives, such as Louisiana, do not have the established infrastructure that Florida has. These states, however, are also aggressively pursuing the building of an infrastructure, buildings and people, to support the industry base. Currently, crews are being brought in from other states, including Florida and Texas.

  As business continues to grow and become steady in other states, especially neighboring states, the potential for Florida's seasoned trained crew base to further erode is great. Erosion of a well-known, marketable, draw to a state for business needs to be avoided.

- As one respondent to questionnaire stated, "Ignoring it, won't make it go away." The current financial incentive of the state, although extremely successful, should be reviewed and modified to make it more competitive while retaining the integrity of the incentive to benefit the state and our industry and crew. In other words, do not give away the farm.

  Concerns relating to the following aspects of the incentive need to be addressed:
  1. threshold level of the incentive acting as a disincentive,
  2. adequacy of the incentive regarding commercial production, television pilots, television series, and independent productions,
  3. perception of uncertainty of funding acting as a disincentive to doing business in the state, and
  4. ineffectiveness of the incentive for digital-media-effects and business relocation.

- The use of a transferable corporate tax credit versus annual appropriation should be reviewed to determine if this will ameliorate concerns regarding the state's incentive and will bring more business to the state on a long-term basis.

- There is a need for a strategic plan for growth of the entertainment industry sector in the state which includes specific steps for growing our indigenous industry.

This should be a roadmap that is developed by the Office of Film and Entertainment in conjunction with Enterprise Florida, Inc., Workforce Florida, Inc., the appropriate university, college, and community college programs in the state. Local film commissions and persons in the industry should be involved in the discussions as well.

- The variety of incentives that encourage independent production and indigenous industry growth that are being used in other states should be reviewed to determine if these could help benefit the state in its efforts to grow this economic development engine. These include incentives related to infrastructure, training, and independent production. They also relate to encouraging distribution and financing.

- Florida is the only state that statutorily specifically excludes "electronic gaming", i.e., the creative development and physical creation of video games, from its incentives. This is at a time when electronic gaming and other electronic media developments are viewed as being the up and coming wave of the future in the entertainment industry. Louisiana specifically offers incentives to lure such business to relocate to the state. Georgia is trying to become the leader in the field in the Southeast. Questionnaire respondents, film commissioners, crew, and educators, stated that Florida should become the "grandfather, not the grandchild" of this area. Florida should examine how this industry fits into its plans. Possibly the current incentive is not appropriate; however, the issue is with providing a disincentive, even if just perceived, by a growing segment of the industry.

- The sales and use tax exemption does not include an exemption for raw stock film, videotapes, and videocassettes unlike our neighboring competitive states in the southeast and other states. In order to remain competitive, this exemption should be reviewed to determine if it will help the state in its efforts to grow market share. The exemption of these items also needs to be reviewed to determine what additional fiscal impact it would have on the state, both cost and benefit.

- The use of film festivals as distribution hubs for independent filmmakers should continue to be explored by the Office of Film and Entertainment.

- The post-secondary institutions should be encouraged to come together to establish cooperative programs between institutions designed to focus on specific needs of the workplace or on critical needs in professional infrastructure in the entertainment industry. These institutions, if amenable, should be called together to be a think tank for the industry and the state.

- The Office of Film and Entertainment has done a yeoman's job with the staff and resources at its disposal. From the responses to the questionnaire on entertainment industry and from the survey of other state film offices, it is apparent that the staffing level is inadequate for the statutory responsibilities and for the expectations of the office. The Film Commissioner should independently determine the staffing level that would help the OFE meet current and future needs. An understaffed office and an under-funded office will have difficulty doing what is required, making a continual positive impression on the industry, and aggressively marketing our state to the world.

FL Commission on
Tourism & VISIT FLA
Interim Project Report

The full text of the Florida Commission on Tourism & VISIT FLORIDA Interim Project Report is available online. Please visit the Tourism Committee's webpage at www.myfloridahouse.gov.
The report can be found under "Interim Projects."

Executive Summary

Purpose

The purpose of the interim project report is to provide Members with information on the Florida Commission on Tourism and VISIT FLORIDA's compliance with current law, on the need for any changes in law to address changes in the state and the tourism industry over the last ten years, on long-term tourism marketing and promotion initiatives that could impact public financial participation, and on the use of funds for hurricane recovery and, if possible, the effect of those funds.[1]

Background

For ten years, the Florida Commission on Tourism (Commission) and its direct-support organization, VISIT FLORIDA, have functioned as the state's tourism promotion and marketing arm. They have been responsible for maintaining the vitality of an industry segment that, at a minimum, provides approximately 20 percent of our state sales tax revenues.

Although there have been three OPPAGA reviews which primarily focused on the ability of the Commission and VISIT FLORIDA to comply with statutorily required outcome measures and performance standards and the development and refinement of return on investment measures, there has not been a formal legislative committee review to determine overall compliance with requirements of the law nor to determine if, after 10 years of existence, provisions of the law need to be updated.[2] Included in this review should be an examination of the short-term and long-term vision for the state's tourism marketing and promotion initiatives that have been identified by these entities so that the Legislature can provide input, if needed, and can monitor these efforts and their impact on the vitality of the state's tourism industry and the need, if any, for additional public funding to maintain or increase the state's tourism market share.

Another area for review involves the Commission and VISIT FLORIDA's hurricane recovery efforts related to tourism. Prior to the Regular 2005 Legislative Session, the House Tourism Committee held both a meeting and a hearing on the impact of the 2004 hurricanes on the tourism industry and infrastructure in Florida and proposals for addressing the short-term and long-term needs of the state and impacted local communities. Although no funding was specifically appropriated to assist in the tourism initiatives proposed to keep tourists and convention business coming to the state, House leadership was instrumental in working with the Governor to secure $4.75 million in increased state revenue to help bolster Florida's tourism marketing campaign. These funds, along with additional private sector revenues, were to be used to enhance the state's marketing program to reach both leisure travelers and meeting planners, to

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[1] See ss. 288.1221 through 288.1227, 288.017, and 14.2015, F.S.
[2] One example is the county composition of, and the number of, tourism regions specified in law which are required for consideration for 4-year appointments of 17 Commission members by the Governor.

encourage meetings and conventions, and to provide grant funds for areas hardest hit by the hurricanes. The focus of the marketing efforts was to be geared toward improving perceptions on travel to Florida specifically during June through November 2005. The use of the funds and the effectiveness of these efforts need to be reviewed to assist in future program and funding requests brought before Members.

The issues to be reviewed in the report are diverse. Yet, they all relate to how well the state's public-private tourism partnership has performed and is performing as the state's tourism marketing and promotion entity. They also relate to identifying what, if anything, needs to be done to assist in keeping the state the premier tourist destination.

Methodology

To assist in providing answers to issues outlined above, staff conducted the following research:

- Review of Florida law governing the public-private partnership;
- Review of previous legislative committee and OPPAGA reports on the public-private partnership;
- Review of partnership contracts;
- Review of marketing plans, proposals, and budgets;
- Interviews of VISIT FLORIDA staff and members of the board of directors, both over the telephone and through written responses to a questionnaire;[3]
- Interview of OTTED staff; and,
- Interview through a questionnaire of persons in select areas of the state who are knowledgeable of and involved in the tourism industry in their local communities.

Findings

<u>Tourism Public-Private Partnership</u>

- Florida Commission on Tourism/VISIT FLORIDA—Public-Private Partnership

Florida has taken a number of steps to ensure that the economic value of tourist generated commercial activity and the corresponding tax revenues continue to be a major component of Florida's economic base. One major step was taken when the Department of Commerce was dismantled in 1996 and the responsibilities for the state's tourism promotion and marketing efforts was placed in a statutorily created public-private partnership: the Florida Commission on Tourism and its direct support organization, the Florida Tourism Industry Marketing Corporation (now doing business as VISIT FLORIDA).[4] The hope was then, and continues to be, that by pairing governmental

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[3] <u>See</u> Appendix A for the questionnaire used in all interviews.

[4] The 1991 Legislature created the Florida Tourism Commission in Chapter 91-31, L.O.F., and gave the Commission a year to collect empirical data and answer specific policy questions on the state's role in promoting itself as a tourist destination, including the question of how to fund the promotion based on an industry-standard plan. In 1992, the Legislature made the Commission a permanent 17-member body and made it administratively adjunct to the Department of Commerce. The Commission was to advise the

funds and official status with private funds and expertise, the eventual outcome of Florida's tourism promotion efforts will be economic growth for the state's tourism industry sector, and, subsequently, the state's overall economy.

The purpose of the 35 member Commission is to be the administrative policy link between the public and the private sector tourism promotion partners. The purpose in law states that the Commission is to:

- Oversee the state's efforts to increase the positive impact of tourism, including increased employment for state citizens, to all sectors of the economy through effective marketing activities;
- Continually upgrade the image of Florida as a quality destination;
- Promote tourism objectives with all geographic, socioeconomic, and community sectors considered equitably; and,
- Judge its efforts by the same standards of accountability and integrity as those used by successful, respected private sector businesses.[5]

VISIT FLORIDA, composed of the private and non-state public sector members of the Commission, is the private side of the public-private partnership and is charged with carrying out the policies set forth by the public partner in its 4-year marketing plan and other provisions of law. It operates as the umbrella organization under which the state's tourism marketing campaigns are coordinated. The mission of VISIT FLORIDA is to market and facilitate travel to and within Florida for the benefit of its residents, economy, and travel and tourism industry.[6]

Funding from the state for its tourism efforts comes primarily through the dedication of 15.75% of the $2 per day surcharge on rental car leases as well as any additional General Revenue appropriations. Those funds, however, are required to be matched by VISIT FLORIDA on a 1:1 basis from the private sector.[7]

- Relationship with Governor's Office on Tourism, Trade and Economic Development

Through a contract with the Governor's Office of Tourism, Trade, and Economic Development, the Commission carries out its purpose, duties, and responsibilities assigned by statute. The contract also requires the submission of various reports on a quarterly and annual basis that are in addition to those required by law. These reports are required of the Commission but are to be prepared by VISIT FLORIDA on its behalf.

Division of Tourism on tourism promotion and marketing. Later, the Commission recommended the privatization of tourism activities to free it from the inability to quickly respond to market changes and to provide more money for tourism initiatives through other sources. In 1995, the House Tourism and Cultural Affairs Committee began discussing changes to the way in which the state tourism initiatives were handled. In 1996, the Committee spearheaded the efforts toward privatization. The industry advocated for the change and pledged $6 million for matching state dollars even before legislation was passed.

[5] See s. 288.1223(1), F.S.

[6] VISIT FLORIDA's four-year, Strategic Plan 2006 - 2009, approved by the Commission and the board of directors of VISIT FLORIDA in December 2005.

[7] See ss. 288.1224(4)(c) and 212.0606, F.S.

The quarterly payment schedule is outlined with the caveats that payment is contingent upon meeting the quarterly requirements as well as the availability of funds. The contract also includes performance measures that are included in the Implementing Bill as part of the requirements. The Commission must approve all contracts. Once a contract is signed, then money can be released to VISIT FLORIDA pursuant to the contract with the Commission.

An issue that has been raised by the Commission is the timeliness in which OTTED presents the contracts for consideration by the partnership. Contracts, not even first drafts, are ready for consideration by the beginning of the fiscal year. In the past, contracts have been prepared and negotiated and ready for consideration by the Commission no later than the September quarterly meeting with disbursement of funds following shortly thereafter. This year a substantially rewritten contract was not provided for consideration until September 17, 2005. Major points of the contract were negotiated and a final contract was received from OTTED on November 4, 2005. The contract was sent to the Commission's executive committee on November 7, 2005 and was approved by the committee and signed on November 10, 2005. The fax of the contract was signed by OTTED on November 12, 2005 with the actual contract not being signed until December 5, 2005. The first quarter payment applied for on September 30, 2005 was received in two payments on November 17, 2005 and November 21, 2005.

Some commissioners expressed concern about the need for contracts being ready much sooner so that negotiations, if needed, could take place and be resolved, and funding be released in a timely fashion to avoid any possibility of a cash flow problem.

- Impact of Tourism Public-Private Partnership

Florida's tourism program under the Department of Commerce was valued at $14 million in FY 1995-96. In FY 1996-97, the state had provided $18 million and the private sector had invested $23.8 million for a program worth $41.8 million. In FY 2004-05, the state invested $25.6 million and the private sector invested $65.5 million for a program worth $91.1 million.[8] In 1996, with the creation of VISIT FLORIDA, it had 407 private sector partners and in FY 2004-05 that number had grown to 3,432.[9] Direct travel-related employment in the state has increased from 732,800 in 1995 to 912,700 in 2004.[10] Over the last five years, the number of visitors has increased from 72.8 million to almost 80 million, and the sales tax collections attributed to tourism-related expenditures has grown from $2.9 billion to $3.4 billion.[11]

For more information on the public-private partnership, its structure and responsibilities, the contracts with OTTED, and the partnership's impact please see pages 4 through 13 of the report.

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[8] See Appendix F for a chart of public and private funding over a ten year period.
[9] VISIT FLORIDA 2004-2005 Annual Report, VISIT FLORIDA, p. 24.
[10] See Appendix G for a chart on direct travel-related employment.
[11] See Appendix I for charts on tourism-related taxable sales and tourism-related sales tax collections and Appendix J for charts on State and County Fiscal Year collections for local option tourist-related taxes.

Compliance

Both the Commission and VISIT FLORIDA have met their statutorily required responsibilities.[12] Please see the charts on pages 15 – 23 of the report for details on responsibilities and compliance. For FY 2004-05, the annual standard for the performance measures required in the Legislative Implementing Bill and in the contract with the Governor's Office of Tourism, Trade, and Economic Development (OTTED) have been met or exceeded with the following exceptions:

- Resident travel was 600,000 below the FY 2004-05 standard. According to VISIT FLORIDA, the pattern of decrease suggests that resident travel was affected first by the hurricanes and then later in the year by gas prices.
- Local option tourist-related tax was $44.6 million below the standard because figures do not include the last quarter numbers which are not available from the Department of Revenue at this time.
- Number of leads is down by 229,403 (a little less than half).[13] According to VISIT FLORIDA, consumer demand has changed to website rather than use of the toll-free number. The mailing of printed material has decreased while website hits have increased.
- Number of private sector partners was 276 partners under the standard. The FY 2004-05 number of partners was below the FY 2003-04 number of partners by 96. According to VISIT FLORIDA, the loss of partners was due to hurricanes and related economics.
- Strategic alliance program revenue was below the standard by $28,905 and was below the FY 2003-04 revenue by $8,496. According to VISIT FLORIDA, the difference between the two fiscal years was due to the loss of one strategic alliance partner due to its financial difficulties.[14]

According to the contract between the Commission and OTTED, acceptable reasons for not meeting a performance standard include, but are not limited to, uncontrollable circumstances, unfavorable external economic conditions, quarterly variations, establishment of new processes, including the transfer of programs, and allocation of resources to meet priority demands as determined by OTTED.[15]

The standards for FY 2005-06 are the same as those for the fiscal years cited above. See Appendix K for a complete listing of the standards and compliance for the two previous fiscal years.

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[12] Neither the Commission nor VISIT FLORIDA have the required number of gubernatorial appointees. This is not the responsibility of either entity. Names, however, have been submitted for the Governor's review. Additionally, one position that is required for a representative of a statewide organization representing the hotel industry might not be able to be filled until there is legislative clarification. See the discussion contained in the report and the discussion of conclusions.

[13] The word "leads" refers to the number of requests for specific written information based upon a call to action from print, radio, or television advertisement.

[14] See Appendix K for the Final Report on Performance Measures for FY 2004-05.

[15] OTTED Agreement OT-06-003, p.4.

Use of Emergency Funds and Supplemental Funding for Hurricane Recovery

- General Comments

From August 13, 2004 to September 26, 2004, there were four hurricanes that made landfall in Florida impacting the economy of the state in many areas. One of those areas affected was tourism: both in perception and in actuality. The Commission on Tourism and VISIT FLORIDA expressed that the way to help the state ensure recovery was by addressing concerns of both meeting planners and leisure travelers regarding travel during the hurricane season. The focus of the effort was on the months of June through November, 2005.

In the months of July, August, September, and October 2005, the state was again impacted by four hurricanes. Three made landfall and one, Rita, caused an evacuation of the Florida Keys.

- Use of Emergency Funds

The law requires that the Commission's four-year marketing plan include an emergency response component. This is also required in the contract with OTTED. The Commission, in turn, requires VISIT FLORIDA to maintain such a fund. The fund has been maintained at $2 million.

Of the $2 million after the 2004 hurricanes, over $1.6 million funded advertising, approximately $122,000 was used to fund research, and approximately $243,560 funded domestic and international public relations initiatives. These funds, some used even after Charley first hit, were committed prior to the receipt of any hurricane relief funding in 2005.

For a discussion on the replenishment of the emergency fund and on other actions outside of the funding that were instituted by the Commission and VISIT FLORIDA, please go to the section of the report that discusses hurricane recovery.

- Funding After the 2004 Hurricane Season

Even before the commencement of the Regular 2005 Legislature, meetings and hearings were held on the impact of the hurricanes on the tourism industry and infrastructure in Florida and proposals for addressing the short-term and long-term needs of the state and impacted local communities. Although no funding was specifically appropriated to assist in the tourism initiatives proposed to keep tourists and convention business coming to the state, House leadership was instrumental in working with the Governor to secure $4.75 million in increased revenue to help bolster Florida's tourism marketing campaign. Those funds, along with an additional $1.418 million made available by freezing select VISIT FLORIDA programs (a decision made by the board of directors), brought the total available funding to $6.168 million. The funds were to be used to enhance the state's marketing program to reach both leisure travelers and meeting planners, to encourage meetings and conventions, and to provide grant funds for areas hardest hit by the hurricanes. The focus of the marketing efforts was to be geared toward improving perceptions of travel to Florida specifically during June through November 2005.

The funding was used to do the following:[16]

- Provide increased advertising and promotions through radio and television to address consumer perception issues related to coming to Florida;
- Provide increased funding for consumer information to be provided in the welcome centers;
- Provide increased advertising, direct marketing and Internet programs supporting the "Cover Your Event" insurance, and the "See For Yourself" meeting planner visitation program to address planner perception issues about booking events in the state;
- Provide media tours highlighting the state, media missions, and media satellite tours to educate the media on all of the state;
- Distribute marketing grants to 10 areas of the state impacted by the hurricanes; and,[17]
- Provide funding for pre and post meeting planner and consumer research.

Studies conducted in March and June showed that the efforts were in fact doing what they were intended to do.

- Impact of Efforts on Tourism

The numbers of tourists coming to the state and certain tourism indicators indicate that tourism in the state appears to be doing well.

For example, according to the President and CEO of VISIT FLORIDA, the 2005 third quarter visitation to Florida rose by 9.3% in spite of the hurricanes and the adverse media coverage they brought. In fact, he projected that the state was on track to break the 80 million visitor mark for 2005.[18]

Additionally, the consensus-built forecast for 2006 tourism presented to the Florida Commission on Tourism in December 2005 indicated that Florida can expect to see 3.2% more visitors in 2006. This is higher than national forecasts that predict 2% more visitors to the country. However, the consumer perceptions strategic research conducted in November 2005, which was part of the research for the forecast, indicated that consumer perceptions in certain areas were equal to or worse than those expressed in October 2004.

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[16] See Appendix L for "2004 Hurricane Response Reconciliation of Funding" for the state expenditures prepared by VISIT FLORIDA and Appendix M for the plan for the use of the funds presented to the Governor and the Legislature on February 10, 2005.
[17] See Appendix N for a listing of the VISIT FLORIDA Hurricane Grants.
[18] *President's Report*, included in December 2005 VISIT FLORIDA quarterly meeting packet. According to an analysis of visitor estimates by VISIT FLORIDA, in the third quarter of 2004, visitation to the state managed to increase slightly (0.6%) during that period.

The perceptions in two earlier surveys in 2005 had indicated significant improvement. The question is, how much ground that had been gained through earlier efforts has been lost? Additionally, what does this mean since the consensus is still for growth in tourism numbers? Additional surveys are to be conducted prior to the Legislative Session. Hopefully, these studies will provide more insight into the significance of the earlier findings.[19]

For additional impact information please see pages 27 - 28 of the report.

- Issues Identified

The general comments and issues identified are based on a questionnaire and interviews of persons in the tourism industry.

In reviewing the public-private partnership, respondents unanimously agreed that the public-private partnership had improved tourism initiatives in the state. Respondents were asked to identify strengths and also to identify weaknesses or deficiencies of the structure that needed to be addressed.

Weaknesses identified did not relate to the structure of the public-private partnership but to funding, contracts, and requirements impacting the partnership. The weaknesses or deficiencies that the majority of the respondents identified related to the need for additional funding or the need for alternative funding sources which will be discussed under the heading on funding in this section of the report.

Responses to questions relating to Commission membership indicated that there is a need to do further study on the usefulness of the current statutorily-based six tourism regions that are used for 17 of the members of the Commission. One response cited the need for a review of attendance criteria for Commission members. The request was for a statutory requirement for attendance of 3 of the 4 quarterly meetings in a year.

An issue was also raised about the number of statutorily-required Commission meetings suggesting that the number be lowered from quarterly to three times a year.

Several suggestions were made regarding contracts with OTTED. Some of these related to specific contract requirements and others related to the timeliness of contracts. For a discussion of these, see pages 31 - 32 of the report.

Finally, the funding issues raised by the questionnaire and the Commission's strategic plan for 2006-2009 are included on pages 32 - 33 of the report.

[19] Outlook 2006 Consensus-Built Forecast, Presented by Barry E. Pitegoff, Vice President of Research, VISIT FLORIDA, December 12, 2005. The consensus report is based upon four studies commissioned by VISIT FLORIDA and two additional secondary studies.

Conclusions

The following conclusions are made from the findings of the report and are provided for the consideration of the Members:

- The Florida Commission on Tourism and VISIT FLORIDA meet statutory requirements and contractual requirements regarding responsibilities. As discussed below, the only noted issue is not having the statutorily required number of members; however, this is not under the control of the Commission nor VISIT FLORIDA.

- The required statutory tourism industry membership of the Florida Commission on Tourism is 32; however, as of this date, there are only 26 members. These members also serve as the board of directors for VISIT FLORIDA. The vacancies, including required additions made in 2005, have been in existence for six months. The appointments are statutorily required to be made by the Governor.

- The required statutory membership for the Commission includes five representatives from tourist-related statewide associations, including those that represent hotels, campgrounds, county destination marketing organizations, restaurants, and attractions. When the language was written, there was a distinct organization representing hotels and one representing restaurants. Now, there is a combined association, the Florida Restaurant and Lodging Association. This association does not include some of the larger county hotel and motel associations as members. Those associations have formed their own coalition. There are three questions that need to be answered:

    - Is there a "statewide" association representing hotels that can fulfill the specific statutory membership requirement?
    - If an organization represents two groups, should it be allowed to have two voting members on the Commission and the board of directors of VISIT FLORIDA?
    - Based upon the response to the two prior questions, should the language be left as it is, amended, or deleted?

- The number of members of the board of directors for VISIT FLORIDA was not changed during the 2005 Session to conform to the tourism-industry-related membership of the Commission. The Commission has 32 such members; yet, the VISIT FLORIDA board of directors is required to have only 31 members. It is recommended that the two are conformed.[20]

- The regional distribution of the 17 general tourism-industry-related appointments should continue to be reviewed to determine if the six regions should be

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[20] <u>See</u> ss. 288.1223(2) and 288.1226(4), F.S.

reconfigured or expanded. If there is any change, there needs to be a determination on how changes will impact the Commission and the VISIT FLORIDA board of director membership and their effectiveness.

- The Commission is required to recommend a 4-year marketing plan to be carried out by VISIT FLORIDA.[21] According to responses to the questionnaire, the use of the term "marketing plan" is no longer accurate. Actually, the correct terminology is "strategic plan." Marketing is a part of a strategic plan to sustain tourism growth. Additionally, industry representatives stated that in the fields of marketing, advertising, and promotion strategic plans are three years in duration because of the rapid changes in the fields. Consideration should be given to updating the terminology used in the law to reflect current practice. Consideration should also be given to reducing the length of the plan to three years.

- Two issues were addressed through the questionnaire responses that should be reviewed for possible legislative change: reduction in the number of statutorily-required meetings of the Commission and the addition of criteria to the law as grounds for removal of a member of the Commission, such as failure to attend 3 out of the 4 meetings held each year.

- Another issue brought up in the questionnaire and in the strategic plan for the Commission and VISIT FLORIDA is the need for additional public funding and the need for providing funding for the Economic Risk Fund when the funds are depleted because of an emergency. The discussions on the need for additional funding centered around the current funding not growing with the increased rates in such things as advertising which makes the current funding equivalent to funding in 2000. Decisions have been made to cut television advertising for use by the state because of the costs. Additionally, concerns were raised about the ability to compete in new markets and to maintain market share. The new strategic plan calls for an increase in public funds and private funds over the next four to five years.

  It is recommended that the funding level and the requests for funding be carefully reviewed for both short-term and long-term impacts on the growth of the tourism industry and the vitality of the public-private partnership. It is recommended that the strategic plan be reviewed carefully and that the requested investment be analyzed carefully. Always remembering that for every state dollar invested, the non-state sector is required to match it 1:1.

- The timeliness of the Governor's Office of Tourism, Trade and Economic Development (OTTED) providing the fiscal year contract for consideration by the Florida Commission on Tourism is important. The Commission contracts with

[21] In December 2005, the Commission adopted the strategic plan that was approved by the VISIT FLORIDA board of directors. The strategic plan includes a variety of marketing initiatives to accomplish statutory goals of the Commission.

VISIT FLORIDA to perform all functions related to implementing the marketing plan and other directives of the Commission. Funding that is provided by OTTED is a reimbursement for services already performed. As a business, VISIT FLORIDA operates with a budget allocated for certain activities approved by the board of directors. Funds cannot be moved from account to account to cover unrelated expenses. Private funds are designated for certain purposes. A substantially rewritten contract was not provided for consideration until September 17, 2005. Major points of the contract were negotiated, and a final contract was received from OTTED on November 4, 2005. The contract was sent to the executive committee on November 7, 2005 and was approved by the committee and signed on November 10, 2005. The fax of the contract was signed by OTTED on November 12, 2005 with the actual contract not being signed until December 5, 2005. The first quarter payment applied for on September 30, 2005 was received in two payments on November 17, 2005 and November 21, 2005. Currently, the contract allows for a continuation of the contract for six months past its expiration date. However, there would appear to be a need for a good faith effort on all parties to execute the contracts as close to the beginning of the fiscal year as possible. The timeliness of contracts by OTTED with its partners should be reviewed and a determination made regarding requiring such contracts to be provided to partners by a time certain and executed by a time certain.